STATE OF MICHIGAN
IN THE SUPREME COURT

JESSICA A. DILLON,

Plaintiff-Appellee,

v

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,

Defendant-Appellant.

Supreme Court No. 153936
Court of Appeals No. 324902
Isabella Circuit No. 12-010464-NF

AMICUS CURIAE BRIEF ON APPEAL OF THE INSURANCE ALLIANCE OF MICHIGAN

Respectfully submitted,

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STATEMENT OF INTEREST OF *AMICUS CURIAE*

Major insurance companies representing thousands of Michigan employees and millions of customers statewide have joined forces to create the Insurance Alliance of Michigan, with a goal of speaking with a single, unified voice on insurance industry issues. Comprised of the two former major statewide organizations, the Insurance Institute of Michigan and the Michigan Insurance Coalition, the Insurance Alliance of Michigan (IAM) is a government affairs and public information association representing more than 90 property/casualty insurance companies/groups and related organizations operating in Michigan.

IAM's purpose is to serve the Michigan insurance industry and the insurance consumer as a central focal point for educational, media, legislative and public information on insurance issues. It is a respected spokesperson for Michigan's property and casualty insurance industry, and is often invited by this Court to submit amicus briefs.

This case is important to IAM and its members to maintain the automobile no-fault insurance system and its limitations on recovery to conditions related to auto accidents. That requires prompt and accurate notices of injuries claimed. Part of that is timing, to identify injuries claimed close in time to the accidents causing those injuries. This allows for correct reserves, rating and reporting to the Michigan Catastrophic Claims Association. Enforcing the notice requirement of the statute serves the valid purpose of cost containment, important to insurers who are ultimately surrogates for consumers.

This Court has long recognized that the function of an amicus is to shed additional light on a case, particularly where there is an important public interest. See *City of Grand Rapids v Consumers' Power Co,* 216 Mich 409, 415; 185 NW 852 (1921) ("This court is always desirous

of having all the light it may have on the questions before it. In cases involving important public interest leave is generally granted to file a brief as *amicus curiae*… .")

STATEMENT OF FACTS

IAM adopts the statement of facts contained in State Farm Mutual Automobile Insurance Company's brief on appeal.

STANDARD OF REVIEW

IAM agrees with State Farm Mutual Automobile Insurance Company, that the standard of review applicable to the interpretation of a statute and applicable to summary disposition rulings is de novo.

Law and Analysis

This Court should reverse. The Court of Appeals erred both in its statutory interpretation and in its conclusion that the plaintiff substantially complied with the statutory written notice requirement. Substantial compliance is noncompliance. The statute must be enforced as written.

This appeal pertains to interpretation of the automobile no-fault act's MCL 500.3145(1). There the Legislature has required notice of the nature of the bodily injury, not a general notice of accident, to preserve a cause of action beyond one year:

> (1) An action for recovery of personal protection insurance benefits payable under this chapter for accidental *bodily injury* may not be commenced later than 1 year after the date of the accident causing *the injury* unless written notice of *injury* as provided herein has been given to the insurer within 1 year after the accident or unless the insurer has previously made a payment of personal protection insurance benefits for *the injury*. . . . *The notice of injury required by this subsection* may be given to the insurer or any of its authorized agents by a person claiming to be entitled to benefits therefor, or by someone in his behalf. The notice shall give the name and address of the claimant and indicate in ordinary language the name of the person injured and the time, place and *nature of his injury*.

In this Court's February 1, 2017, order granting mini oral argument on the application, this Court directed the parties to address two specific issues:

> (1) the extent to which an injury must be described in order to provide notice of injury under MCL 500.3145;
>
> (2) whether the plaintiff or someone on her behalf provided written notice as required by MCL 500.3145.

Amicus IAM submits that the answers to the Court's questions are: (1) the part of the body directly affected (*i.e,* head, back, hip, leg, foot) and principal physical characteristic (*i.e.,* fracture, cut, burn, area of pain), described in ordinary language, are required to provide notice of the nature of the injury under MCL 500.3145; and (2) written notice of injury was required but

not provided by plaintiff or in her behalf of the hip injury claimed. Amicus IAM offers the following analysis of these two specific issues.

I. The bodily injury claimed must be described in ordinary language describing the part of the body affected and the principal physical characteristic, in order to provide notice of injury under MCL 500.3145

The Court of Appeals identified the issue as follows:

> Given this statutory language, the question presented in this case is whether it was necessary for plaintiff to specifically identify in her notice of injury an injury to her left hip in order to successfully pursue a claim for benefits related to her hip injury, when the hip-injury claim arose more than one year after the accident. In particular, we must determine what is meant in the last sentence of § 3145(1) by "the time, place and nature" of the injury. [*Slip op* at 2.]

The Court concluded that because the statute says "notice of injury" and not "notice of *the* injury," the Legislature must not have expected that the claimant be required to provide notice of injury to a particular body part. Notice of any injury would do:

> Looking to the first sentence of § 3145(1), we contrast the phrase "notice of injury" with the phrase "benefits for the injury." In the first phrase, which describes the notice that must be given to relax the application of the one-year-back rule, the use of the definite article "the" is conspicuously absent. The fact that the Legislature uses it later in the same sentence suggests that it was not mere oversight or poor grammar. The definite article "the" is "used as a function word to indicate that a following noun or noun equivalent is definite" or that it "is a unique or particular member of its class," and it also serves "as a function word before a noun to limit its application to that specified by a succeeding element in the sentence[.]" *The fact that the Legislature omitted its use before the word "injury" in "notice of injury" indicates that the Legislature was not referring to a definite or particular injury.* That is, if the Legislature intended for the "notice of injury" to identify a very specific injury, such as an injury to the left hip, rather than the mere fact that an accident resulted in some injury, it would have provided that "notice of the injury" must be given. [*Slip op* at 3.]

The central flaw in this is that the statute as a whole particularizes the notice with "nature" and related provisions adding context requiring specificity of notice of "the" injury, but allowing description in ordinary language. The context must not be ignored in applying

Legislative intent. The alternative payment provision to notice in MCL 500.3145(1) reflects the practical reality that most claimants will have had payments made within one year for obvious accident related claims. Or, they may sue. There is a 1 year statute of limitations. It is extended automatically with any payments for "the" injury. It is also extended if a written notice is given. Thus, the written notice is most sharply at issue for outlier claims that are not obviously covered or were not treated and claimed within the first year. The Legislature sought middle ground in the notice requirement. It must be in writing. It must be submitted by the claimant or in the claimant's behalf. But, it may be in ordinary language. Still, it must give meaningful information beyond just that there was an accident.

It is a given that accidental bodily injury is claimed, so the "nature of injury" must provide further details as to the area of the body injured and type of injury. This is because the context of MCL 500.3145(1) starts with "accidental bodily injury." It then refers to "the injury" twice in the sentence referring to written notice of injury, and then follows "written notice of injury" immediately with "as described herein." To read the final provision on notice requirements including "nature of his injury" as just physical injury with no specificity as to the area of the body and type of problem would err in failing to read this statute as a whole. The Legislature went beyond general "accidental bodily injury" when it then particularized "the injury." It then specified that the notice describe the specific "nature of his injury." To read this as at the same level of generality as accidental bodily injury or somehow more general than "the injury" would ignore the general-to-specific logic sequence of the Legislature.

This is not the first time the Legislature has used the phrases "notice of injury" and "notice of the injury." See, for example, MCL 691.1404, which is entitled "Notice of injury and

defect in highway," and MCL 418.381(1) of the Worker's Compensation Act, which employs the language in setting forth mandatory requirements of the employee:

> The employee shall provide a *notice of injury* to the employer within 90 days after the happening of the injury, or within 90 days after the employee knew, or should have known, of the injury. . . . [MCL 418.381(1).]

The Court of Appeals has aptly recognized that the phrase "notice of injury" under MCL 418.381(1) must mean notice of *the* injury when it ruled a claimant's claim for a second injury was untimely. See *Chambers v Automatic Retailers of America,* 129 Mich App 344, 346-347, 350; 341 NW2d 136 (1983), and *Richter v Monarch Stamping,* 94 Mich App 766, 767-768, 769; 288 NW2d 360 (1979). And in one unpublished decision, the Court directly addressed and rejected the claimant's argument that notice of one injury would be sufficient to make timely the later identification of another injury.

> The language of § 381(1) does not support the assertion that a claim for benefits for one alleged work-related injury constitutes a claim for any and all work-related injuries. Under plaintiff's interpretation of this statute, a timely claim for benefits for one injury would allow a claim for another, different injury many years later. This would be the case . . . in spite of the fact that the employer might not have had any knowledge of the other injury. To adopt plaintiff's interpretation of § 381(1) would be to frustrate the purpose of the statute, which is to prevent stale claims. Just as the giving of notice of one injury does not constitute the giving of notice of another injury, *Bentley v Assoc Spring Co,* 133 Mich App 15; 347 NW2d 784 (1984), a claim for one injury should not be found to constitute a claim for a totally different injury. [*Harrell v Nat'l Bank of Detroit,* unpublished opinion per curiam of the Court of Appeals, issued February 28, 1997 (Docket No. 191272), attached as Exhibit A.[1]]

With all due respect to the Court of Appeals in the instant case, its analysis of the lack of the definite article "the" in the statute is misplaced. This is not a comparison between the use of "the" and "an," given that neither article is used. Instead, there are many occasions when no

[1] The undersigned was unable to identify any published case that directly addressed this issue.

article is necessary,[2] and this is one of them. Rather than apply an inapplicable standard to a nonexistent word, the Court's focus should have been on the word "of" and its meaning in the sentence. "Of" is a preposition.[3]

> A preposition always has an object, which is usually a noun or pronoun. The preposition establishes a relationship such as space, time, accompaniment, or manner between its object and another word in the sentence. The preposition with its object (and any modifiers) is called a *prepositional phrase*.[4]

A prepositional phrase may act as an adjective, which modifies a noun.[5] Thus, in § 3145(1), "of injury" simply explains that the type of notice that must be given is of the injury, not of the accident. Both before and after the phrase "of injury," the very same statute refers to *the* injury:

> An action for recovery of personal protection insurance benefits payable under this chapter for accidental bodily injury may not be commenced later than 1 year after the date of the accident causing *the injury* unless written *notice of injury* as provided herein has been given to the insurer within 1 year after the accident or unless the insurer has previously made a payment of personal protection insurance benefits for *the injury*. . . .

Thus, notice must be given of *the* injury, not *any* injury. The purpose for a meaningful notice of the type of injury claimed is confirmed elsewhere in the statutory scheme, including in the injury reporting requirements that insurers have on catastrophic claims.

To alleviate the burden of catastrophic injuries on individual insurers, the Legislature enacted MCL 500.3104, through which the Michigan Catastrophic Claims Association (MCCA) was created. The primary purpose of the MCCA is to indemnify its member insurers for

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[2] David Appleyard's Guide to Article Usage in English, <http://www.davidappleyard.com/english/articles.htm>, accessed July 13, 2017, attached as exhibit B.

[3] *Harbrace College Handbook* (12th ed), pp 14-15, attached as Exhibit C.

[4] *Id.* (Emphasis in original).

[5] William A. Sabin, *Gregg Reference Manual* (tribute edition), pp 666, 672, attached as Exhibit D.

amounts paid for PIP benefits in excess of the "catastrophic" level. *In re Certified Question,* 433 Mich 710, 714-715; 449 NW2d 660 (1989).

MCL 500.3104(7)(d) requires the MCCA to "calculate and charge to members of the association a total premium sufficient to cover the expected losses and expenses of the association that the association will likely incur during the period for which the premium is applicable." MCL 500.3104(7)(b) directs the MCCA to establish procedures by which member insurers shall promptly report to the MCCA every claim which, on the basis of the injuries or damages sustained, may reasonably be anticipated to involve the MCCA if the member insurer is ultimately held legally responsible for those injuries and damages. It also obligates member insurers to advise the MCCA of "subsequent developments likely to materially affect the interest of the Association in the claim."

The MCCA has adopted a Plan of Operation in order to fulfill these obligations.[6] Article X of that Plan, section 10.01 (page 9), sets forth the obligation of member insurers. This section requires the member insurer to report, as soon as practicable after the loss, each claim which may reasonably be anticipated to result in a Reimbursable Ultimate Loss, that is, a claim which exceeds the retention amount set forth by statute. The section requires reporting of claims such as spinal cord injuries resulting in quadriplegia or paraplegia, and amputation of limbs. It also requires reporting other injuries with $300,000 exposures.

MCL 500.3145(1), with its one-year period of limitation and its one-year-back provision, is designed to (a) facilitate prompt and accurate reporting, and (b) preclude late claims from interfering with MCCA calculations and assessments. If claimants across the board are permitted to report a sprained finger within one year, then four years later to report a catastrophic

[6] See Exhibit E.

claim, this substantially interferes with the MCCA's ability to predict the amount of assessments to charge to members close in time to accidents. Such an interpretation would frustrate legislative intent.

The Court of Appeals' interpretation of "nature of his injury" was likewise incorrect. This Court has recognized that "'Nature' is defined as a 'native or inherent characteristic.'" *Corley v Detroit Board of Education,* 470 Mich 274, 279; 681 NW2d 342 (2004). Thus, the word "nature" in reference to injury particularizes with the connotation of inherent. Despite the fact that the alternative definition of "nature" cited by the Court of Appeals indicated that it meant a class "distinguished by *fundamental or essential characteristics*," the Court incongruously concluded that "nature" somehow had a general rather than specific connotation in this context:

> Turning to the last sentence of § 3145(1), the Legislature tells us that, among other things, the notice shall give the "nature of his injury." Merriam-Webster's defines "nature" in this context as "a kind or class [usually] distinguished by fundamental or essential characteristics[.]" Thus, we see reference to the general, not the specific. Accordingly, we reject defendant's argument that the notice of injury must have specified injury to plaintiff's left hip. The fact that defendant received notice that plaintiff suffered physical injuries in a motor vehicle accident was sufficient to satisfy the statute. [*Slip op* at 4.]

However, that definition actually stated "distinguished *by* fundamental or essential characteristics," not "distinguished *from* fundamental or essential characteristics." Thus, the fundamental or essential characteristics identify the class; the class is not defined as general with no fundamental or essential characteristics. It is this latter, incorrect meaning, which was given by the Court of Appeals, and which does not comport with the contextual and logical meaning given to the term "nature of injury."

"Nature of injury" is a term with existing and helpful applications. Both the National Bureau of Labor Statistics and the Centers for Disease Control and Prevention define "nature of

injury" as "the principal physical characteristic(s) of the . . . injury.[7] In further explanation, the nature of the injury is explained; it "provides a description of the damage relating to the part of the body that is affected."[8] For example:

> Sprain to the back would indicate the back is the body part and the sprain is the nature of the injury; broken arm would indicate that the arm is the body part and the fracture is the nature of the injury; crushed finger would indicate the finger is the body part and the crushing is the nature of the injury.[9]

Thus, at a very minimum, the body part must be identified, and the characteristic of the injury must be mentioned. MCL 500.3145(1) permits the nature of the injury to be stated in "ordinary language." Certainly it is enough to describe a fractured arm as a "broken forearm." One need not describe the nature of the injury as a closed fracture or comminuted fracture or other technical terms a physician might use.[10] On the other hand, there is a limit to how far the Legislature allows claimants and courts to oversimplify or generalize. That limit is ordinary language to describe the nature of the injury. And, it has to be written, so this level of formality must be respected.

Plaintiff and her supporting amicus suggest that the notice requirement should be watered down to a meaningless level of something like merely notice of an accidental bodily injury as sufficing in a notice, because of undiagnosed conditions that may be discovered after one year, as well as progressive conditions such as inability to walk that develop years after a foot and ankle injury. The response is three-fold.

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[7] See Exhibit F.

[8] Workplace Testing.com, *Nature of Injury,* <https://www.workplacetesting.com/definition/1406/nature-of-injury>, accessed July 12, 2017, attached as Exhibit G.

[9] WorkSafeNB Injury Analysis, *Definitions,* www.worksafenb.ca/docs/Injuryanalysisdefinitions92002.doc, accessed July 12, 2017, attached as Exhibit H.

[10] <http://www.emedicinehealth.com/broken_arm/article_em.htm> accessed July 14, 2017.

First, the Legislature certainly might have but did not provide for such a mere notice of accidental bodily injury to allow for these possibilities. It did use the term "accidental bodily injury" in the first sentence of MCL 500.3145(1), so if that is what it wanted, it had the words at hand to cover all possible injury areas that were either not diagnosed within a year, or not apparent to a claimant within a year, or, would develop in a new area of the body after one year. It did not allow such a blanket notice.

Second, there are adequate precepts of causation for conditions directly related to injuries disclosed in a notice of injury to deal with secondary treatment from injuries specified in a notice. In *McPherson v McPherson,* 493 Mich 294, 297-298; 831 NW2d 219 (2013), this Court addressed secondary conditions caused by a first injury. It applied a test of direct relationship of a motor vehicle accident related injury to a second condition caused by it, implying that such a secondary condition directly caused by a first would be covered for PIP benefits, in contradistinction to a condition that is not covered since merely incidental, fortuitous or but for in relation. *McPherson* alluded to the 'almost any causal connection will do' test espoused in Court of Appeals' precedent but not this Court, a position ruled out by this Court in *Oostdyk v Auto-Owners Ins Co,* 498 Mich 913; 870 NW2d 926 (2015). Still, progressive decline from an injury in a notice has been addressed adequately with the dichotomy between directly related and merely incidental, fortuitous and but for in causal relation to an injury in a notice.

Third, while plaintiff and her amicus supporter say that the accidental bodily injury limitations are sufficient protection to insurers and so the notice statute need not be applied as written to require the nature of the injury claimed to be specified in writing, *McPherson* illustrates that whatever limitations the Legislature chooses can always be challenged for an outlier condition or treatment that might be related to an accident in some way but remains not

covered. Here, it is a medical treatment of a hip condition that plainly was not in a written notice of injury provided in keeping with MCL 500.3145(1), and indeed, was not even diagnosed as accident related until after the surgery that occurred some four years post-accident.

Still, it is important to point out that under the pre-no-fault system, plaintiff's latent hip problem would not have been covered by the tort reparations system with its 3 year statute of limitations in MCL 600.5805(10). Pre-no-fault, "a high percentage of persons injured in automobile accidents received no reparations under the tort system," and, "Minor injuries were over-compensated and serious injuries were under-compensated." *Shavers v Kelley,* 402 Mich 554, 620; 267 NW2d 72 (1978). In upholding the constitutionality of the no-fault act, this Court rightly rejected the notion that the new system had to be perfect: "the Legislature need not provide an 'adequate substitute' remedy before abolishing a common-law cause of action in tort." *Id.*

Part of the tradeoff for the no-fault reparations system with fault-free and expeditious benefits in more cases than the prior reparations system, is shorter deadlines. It specifies expeditious notices and suits within a year. This means that a claimant really must figure out the injury claimed and get in a written notice of it within a year or there will be no coverage for an unusual latent problem that comes to light thereafter. However, as this Court said in *Belcher v Aetna Casualty and Surety Co,* 409 Mich 231, 245; 293 NW2d 594 (1980), "the Act is not designed to provide compensation for all economic losses suffered as a result of an automobile accident injury. *** Dollar and *time limitations* are placed upon the amount of benefits payable for such losses." (Emphasis added.) Likewise, the one year notice of injury provision in MCL 500.3145(1) is part of the Legislature's choice that is part and parcel of the no-fault reparations system. This Court is urged to review what it said in *Shavers* about the shortcomings of the prior

reparations system, found at 402 Mich 554, 621-622. If this Court were at liberty to tinker with the timing or drop the requirement of written description of the nature of the injury claimed, it might help this plaintiff, but at what cost?

II. The plaintiff or someone on her behalf did not provide written notice required by MCL 500.3145

"When the Legislature has clearly expressed its intent in the language of the statute, no further construction is required or permitted." *McCahan v Brennan,* 492 Mich 730, 736; 822 NW2d 747 (2012). "Courts may not engraft an actual prejudice requirement or otherwise reduce the obligation to comply fully with statutory notice requirements. Filing notice outside the statutorily required notice period does not constitute compliance with the statute." *Id.* at 747. Substantial compliance is noncompliance. *Id.*

As relevant to this situation, the first sentence of MCL 500.3145(1) states that suit *may not* be brought more than one year after the accident unless *written* notice of the injury is given to the insurer within one year.

> An action . . . may not be commenced later than 1 year after the date of the accident . . . unless written notice of *injury* . . . has been given to the insurer within 1 year after the accident. [*Id.*]

Although "shall" is clearly mandatory, and "may" is typically permissive, "may not" is not permissive. "May not" has the same meaning and import as "cannot" or "shall not." *Walters v Nadell*, 481 Mich 377, 383; 751 NW2d 431, 434–35 (2008). The Legislature could have simply said notice, but it specified that the notice had to be written. Contrast this with MCL 418.381(1), which states that a claim "may be either oral or in writing." Thus, the Legislature certainly knows how to specify the manner in which notice must be made. "When the Legislature enacts laws, it is presumed to know the rules of statutory construction and therefore its use or omission of language is generally presumed to be intentional." *Carson City Hosp v*

Dep't of Community Health, 253 Mich App 444, 447-448, 656 NW2d 366 (2002). Thus, unless the notice of the injury is written, no suit may be filed.

The next two sentences of MCL 500.3145(1) describe who may give the notice, to whom the notice must be given, and what is required in the notice:

> The notice of injury required by this subsection may be given to the insurer or any of its authorized agents by a person claiming to be entitled to benefits therefor, or by someone in his behalf. The notice shall give the name and address of the claimant and indicate in ordinary language the name of the person injured and the time, place and nature of his injury.

This Court's opinion in *Perkovic v American Ins Co,* 500 Mich 44, 55; 893 NW2d 322 (2017) forecloses any argument that a parent cannot give notice in behalf of a child. However, this notice must be written.

In the governmental immunity context, the Michigan appellate courts have initially vacillated but ultimately have applied written notice requirements specified in statutes. Actual or constructive knowledge of an accident and injury is insufficient to satisfy a statutory writing requirement. In *Chambers v Wayne Co Airport Authority,* unpublished opinion per curiam of the Court of Appeals, issued June 5, 2008 (Docket No. 277900), (*Chambers I*), the Court of Appeals in a split decision held that the incident report taken by an officer with the Wayne County Airport Authority of the plaintiff's slip and fall was sufficient to satisfy the written notice requirement in MCL 691.1406. The dissenting Judge noted that compliance with the statute was mandatory, there was no question that the plaintiff failed to serve written notice as required, and the defendant's filling out of its own internal form was insufficient to meet the notice requirement.

In *Chambers v Wayne Co Airport Authority,* 482 Mich 1136 (*Chambers II*), this Court peremptorily reversed for the reasons stated in the Court of Appeals dissenting opinion.

Subsequently, with the departure of Chief Justice Taylor from the bench, this Court granted reconsideration, vacated its original peremptory reversal order, and denied the application for leave to appeal. *Chambers v Wayne Co Airport Authority,* 483 Mich 1081 (2009) (*Chambers III*). In *Ward v Michigan State University (On Remand),* 287 Mich App 76, 78-79; 782 NW2d 514 (2010), the Court of Appeals noted that the *Chambers* history reinstated the Court of Appeals unpublished opinion, but that the unpublished opinion lacked precedential effect. The Court then went on to reject the plaintiff's argument that the statutory requirements should be ignored merely because the defendant had actual or constructive notice from one of the defendant's employees having tended to the plaintiff before she was transported for medical treatment. This did not satisfy the written notice required by statute of a claimant:

> [T]his provision does not diminish the separate requirement . . . that the injured person serve a notice with the required information in the specified way, on the appropriate representative of the agency, and within 120 days "[a]s a condition to any recovery . . ." [*Ward* at 83.]

The *Ward* Court rightly relied on this Court's opinion in *Rowland v Washtenaw Co Rd. Comm'n,* 477 Mich 197; 731 NW2d 41 (2007), which was recently reaffirmed in *McCahan.* An unambiguous requirement of a statute as to notice that is a precondition to any recovery must be applied as written. See *Ward, supra* at 81. In *McCahan,* this Court held:

> The Court of Appeals correctly determined that when the Legislature conditions the ability to pursue a claim against the state on a plaintiff's having filed specific statutory notice, the courts may not engraft an "actual prejudice" component onto the statute as a precondition to enforcing the legislative prohibition. We reiterate the core holding of *Rowland* that such statutory notice requirements must be interpreted and enforced as plainly written and that no judicially created saving construction is permitted to avoid a clear statutory mandate. We further clarify that *Rowland* applies to all such statutory notice or filing provisions, including the one at issue in this case. [*Id.* at 732-733.]

In the no-fault context, the Legislature has likewise unambiguously required compliance with the notice requirements in MCL 500.3145(1) before suit may be brought. There is no

reason to treat these statutory mandates different from the statutory mandates in the governmental immunity context. In both areas, the Legislature has spoken.

CONCLUSION AND RELIEF REQUESTED

Substantial compliance is noncompliance. There must be written notice. It must identify and, in ordinary language describe the nature of the injury. Here, the hip injury was not in a written notice from the injured person or the injured person's representative. The required written notice was not given to the insurer. Reversal of the lower courts is required.

Respectfully submitted,

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Dated: August 1, 2017 BY */s/ Kimberlee A. Hillock*

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EXHIBIT A

1997 WL 33353316
Only the Westlaw citation is currently available.

UNPUBLISHED OPINION. CHECK COURT RULES BEFORE CITING.

Court of Appeals of Michigan.

Theresa **HARRELL**, Plaintiff-Appellant,
v.
NATIONAL BANK OF DETROIT, a/k/ a NBD Bancorp, Defendant-Appellee.

No. **191272**

Feb. 28, 1997.

Before: FITZGERALD, P.J., and CAVANAGH and N.J. LAMBROS,* JJ.

[UNPUBLISHED]

PER CURIAM.

*1 Plaintiff Theresa **Harrell** appeals by leave granted a decision of the Worker's Compensation Appellate Commission (WCAC) reversing the decision of the magistrate and denying her benefits. We affirm.

Plaintiff began working for defendant National Bank of Detroit in 1973. Throughout her employment plaintiff worked on computers, operated adding machines, and did other hand intensive tasks. In 1981 plaintiff noted pain and numbness in her hands.

Plaintiff sustained a nonwork-related back injury in 1982, and was off work for three months due to surgery. She had further surgery in 1985, and was off work for seven months.

Plaintiff stopped working in March, 1988 due to pain and numbness in her hands. She continued to experience pain in her back, and received long-term disability benefits for that condition.

Plaintiff's amended petition for worker's compensation benefits, filed on September 24, 1991, listed an injury date of March, 1988, and claimed disability due to carpal tunnel syndrome and back problems. The magistrate found that plaintiff was entitled to benefits. Initially, the magistrate determined that plaintiff's claim for benefits for disabling carpal tunnel syndrome was timely. Her initial petition, filed in June, 1990, listed a last date of employment in August, 1988. The magistrate found that plaintiff's claim for benefits for a back disability was not timely because it was filed in September, 1991. The fact that plaintiff filed an application for long-term disability benefits in December, 1988, demonstrated that she was aware of her back problems at that time. The magistrate granted plaintiff an open award for disabling carpal tunnel syndrome.

The WCAC reversed the magistrate's decision. The WCAC found that while the magistrate's finding of a work-related disability caused by carpal tunnel syndrome was supported by the requisite evidence, plaintiff was not entitled to benefits because she had not asserted a timely claim for that injury. The WCAC relied on M.C.L. § 418.381(1); MSA 17.237(381)(1). That section reads:

> A proceeding for compensation for an injury under this act shall not be maintained unless a claim for compensation for the injury, which claim may be either oral or in writing, has been made to the employer or a written claim has been made to the bureau on forms prescribed by the director, within 2 years after the occurrence of the injury. In case of the death of the employee, the claim shall be made within 2 years after death. The employee shall provide a notice of injury to the employer within 90 days after the happening of the injury, or within 90 days after the employee knew, or should have known, of the injury. Failure to give such notice to the employer shall be excused unless the employer can prove that he or she was prejudiced by the failure to provide such notice. In the event of physical or mental incapacity of the employee, the notice and claim shall be made within

> 2 years from the time the injured employee is not physically or mentally incapacitated from making the claim. A claim shall not be valid or effectual for any purpose under this chapter unless made within 2 years after the later of the date of injury, the date disability manifests itself, or the last day of employment with the employer against whom the claim is being made. If an employee claims benefits for a work injury and is thereafter compensated for the disability by worker's compensation or benefits other than worker's compensation, or is provided favored work by the employer because of the disability, the period of time within which a claim shall be made for benefits under this act shall be extended by the time during which the benefits are paid of the favored work is provided.

*2 The WCAC rejected plaintiff's argument that she was entitled to benefits because defendant knew of her hand problems and because she had received long-term disability benefits for her back condition. Although plaintiff stopped working in March, 1988, she did not file her initial claim until June, 1990. Rejecting the assertion that the receipt of long-term disability benefits tolled the claim period in § 381(1), the WCAC concluded that because plaintiff's claim was not made within two years, she was not entitled to benefits for disabling carpal tunnel syndrome.

Findings of fact made by a magistrate are conclusive on the WCAC if they are supported by competent, material, and substantial evidence on the whole record. MCL 418.861a(3); MSA 17.237(861a)(3). Judicial review is of the findings of fact made by the WCAC, not those made by the magistrate. The findings of fact made by the WCAC are conclusive if there is any competent evidence in the record to support them. *Holden v. Ford Motor Co,* 439 Mich. 257, 263; 484 NW2d 227 (1992).

On appeal, plaintiff argues that the WCAC's decision is supported both by the language of § 381(1) and by this Court's decision in *Bieber v. Keeler Brass Co,* 209 Mich.App 597; 531 NW2d 803 (1995). Noting that the last sentence of § 381(1) states that the time for making a claim is tolled if the employee claims benefits for "a" work injury and thereafter receives worker's compensation or other benefits for "the" disability, plaintiff emphasizes that she claimed worker's compensation benefits for a back injury. Section § 381(1) does not require that the claim be successful. Notwithstanding the failure of the workers' compensation claim, she received long-term disability benefits for her back injury. Section 381(1) does not require that any other benefits paid to the employee must be paid for the same condition for which worker's compensation benefits are claimed. In *Bieber* this Court addressed the issue of the operation of the tolling provision in § 381(1), and held that "if any employee makes a claim for *any benefits,* the last sentence of § 381(1) extends the time to claim worker's compensation benefits, *unless* the employee has already made a claim for worker's compensation benefits." 209 Mich.App at 602.

We disagree. The timeliness of plaintiff's claim for benefits for carpal tunnel syndrome is at issue in this case. Neither the language of § 381(1) nor *Bieber* supports plaintiff's position that her claim for long-term disability benefits for her back problem tolled the two-year period for claiming worker's compensation benefits for her hand problem. The language of § 381(1) does not support the assertion that a claim for benefits for one alleged work-related injury constitutes a claim for any and all work-related injuries. Under plaintiff's interpretation of this statute, a timely claim for benefits for one injury would allow a claim for another, different injury many years later. This would be the case in spite of the fact that the first claim was found to be without merit, as was plaintiff's claim for benefits for a back disability, and in spite of the fact that the employer might not have had any knowledge of the other injury. To adopt plaintiff's interpretation of § 381(1) would be to frustrate the purpose of the statute, which is to prevent stale claims. Just as the giving of notice of one injury does not constitute the giving of notice of another injury, *Bentley v. Associated Spring Co,* 133 Mich.App 15; 347 NW2d 784 (1984), a claim for one injury should not be found to constitute a claim for a totally different injury.

*3 *Bieber, supra,* is distinguishable from this case. In *Bieber* and its companion case, *Barnard v. ACCO Babcock, Inc,* the plaintiffs were injured during the course of their employment and received worker's compensation benefits. Due to a nonwork-related injury, plaintiff Bieber

never returned to work. Plaintiff Barnard was laid off when his plant closed. Both plaintiffs filed applications for worker's compensation benefits more than two years after their last day of work. In *Bieber* the WCAC held that the plaintiff's claim was barred under § 381(1) because it was filed more than two years after his last day of work. In *Barnard* the WCAC reached the opposite conclusion. We reversed in *Bieber* and affirmed in *Barnard*. We held that if an injured employee made a timely claim for worker's compensation benefits that were voluntarily paid, the employee's claim is preserved, an no further claim need be filed. The two-year tolling provision in § 381(1) applies only if the employee seeks benefits other than worker's compensation benefits, or when worker's compensation benefits are paid voluntarily with no claim having been filed. We held that because the plaintiffs had made timely claims for worker's compensation benefits, their claims were preserved. 209 Mich.App at 601-604.

Bieber does not address the circumstances of the instant case. In this case, plaintiff did not make a claim for worker's compensation benefits for carpal tunnel syndrome before she stopped working. She was not paid worker's compensation benefits for that condition. Although plaintiff made claim for and received long-term disability benefits for her back problem, she did not claim worker's compensation benefits for carpal tunnel syndrome for more than two years after she stopped working.

We hold that under § 381(1), a claim for worker's compensation benefits is timely if a claim for the same injury was made previously and benefits were paid, or if benefits other than worker's compensation benefits were paid for the same injury. A claim for benefits for one work-related injury does not preserve a claim for an entirely different work-related injury.

Affirmed.

All Citations

Not Reported in N.W.2d, 1997 WL 33353316

Footnotes

* Circuit judge, sitting on the Court of Appeals by assignment.

End of Document

EXHIBIT B

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English User's Bookshelf
Grammar at a Glance
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Tense Situations
Irregular Verb Chart
Irregular Verb Patterns
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David Appleyard's Guide to

Article Usage in English

When to use *a, an, the* or nothing at all

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A Short Article on Articles

For better or for worse, English is blessed with articles. This causes a considerable amount of confusion for speakers of most of the world's other languages, who seem to get on rather well without them. The good news is that English began dropping the complex case systems and grammatical genders still prevalent in other European languages a very long time ago. Now we are left with just two forms of the indefinite article (***a*** & ***an***) and one form of the definite article (***the***). Perhaps more than anything, it is the transition from being a language with synthetic structure to one which is more analytic that has helped gain English the kind of unrivalled worldwide acceptance it enjoys today.

Although greatly simplified, English article usage still poses a number of challenges to speakers of other European languages. Let's compare the German sentence *"Da er Botaniker ist, liebt er die Natur"* with the corresponding English one *"Being a botanist, he is fond of nature"*. You'll see that English puts an indefinite article in front of a profession but German doesn't. Conversely, English manages without articles in front of abstract nouns like *nature*, where German needs a definite article.

Even between British and American usage one finds subtle differences in nuance or emphasis. For example, Americans usually say someone is ***in the hospital***, much as they could be *at the bank* or *in the park*. To the British this sounds like there is only one hospital in town or that the American is thinking of one hospital in particular that he or she patronizes. The Brits say an ailing person is ***in hospital***, just as they would say a child is *at school* or a criminal is *in prison*. This is because they are thinking more of the primary activities that take place within those institutions rather than the buildings in which they are housed. If, however, you are merely visiting one of these places, you are *at the hospital*, *at the school* or *at the prison* — both British and Americans agree here that what we have in mind is the building itself.

These few examples serve to illustrate that there is more to articles than first meets the eye. From whatever perspective you are viewing this page, we hope you'll discover that articles are actually precision tools that greatly contribute to the unique accuracy of expression afforded by the English language. Most article usage does in fact have a reasonably logical explanation. If this can be properly grasped, non-native English can be made less conspicuous, and many misunderstandings avoided.

The Indefinite Article

To facilitate pronunciation, ***a*** is used in front of any word that begins with a consonant or consonant-like vowel sound.

Our town has a theatre, a university, a large park and a conference hall.

Conversely, ***an*** is put in front of any word that begins with a pure vowel sound or a mute *'h'*.

Many Chinese still believe an Englishman always carries an umbrella.

It's an old custom.
It's a strange old custom.

Note that spelling is *not* a reliable indicator of when to use ***a*** or ***an***.

The coastguard received an SOS.
He spent an hour standing in line.

The indefinite article ***a*** or ***an*** is placed in front of a

I have two cars: a Ford and an Audi.

countable noun that is being mentioned for the very first time. Once introduced, all further references to it can be preceded by the definite article ***the***.	The Ford is white and the Audi is silver.
In English, an indefinite article is needed in front of professions.	She is an architect and he is a doctor.
The indefinite article can also be used instead of *per* when giving the rate or pace of something.	He earns $200 a day. She swims twice a week. He drove at 60 miles an hour.
Note too that *little* and *few* become a whole lot more positive when preceded by the indefinite article.	She has a little money and a few friends, so she'll probably get by. *Compare:* She has little money and few friends, so I doubt if she'll get by.

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The Definite Article

The definite article ***the*** is used in front of any noun the listener or reader already knows about.	I have two cars: a Ford and an Audi. The Ford is white and the Audi is silver.
The is also used when the existence of something is common knowledge, or comes as no surprise because of the context in which it is mentioned.	Last week a fighter plane crashed into a field, but the pilot managed to eject safely. Yesterday I spent the afternoon at home. I threw my work clothes into the washing machine and went outside to sit in the garden.
The definite article is used in front of things generally regarded as unique.	The sun, the moon, the sea, the sky, the Arctic Circle, the environment, the capital, the air, the ground, etc.
Because nouns preceded by superlative adjectives and ordinal numbers are by their very nature unique, they too require the definite article.	It was the worst day of my life! The captain was the first person to leave the sinking cruise liner.
Exception: Spoken American English drops ***the*** in dates.	BrE June the twenty-first. The twenty-first (day) of June. AmE June twenty-first.
The definite article is used in front of countable nouns representing a whole class or category of something.	The computer has changed our lives. It is left up to the consumer to decide which one to buy. We all have a duty to look after the old and infirm. The blue whale is thought to be the largest animal ever to have lived.
The is used in front of oceans, seas, rivers, island and mountain chains, deserts, countries with plural names, and noun forms of points of the compass.	The Pacific, the Mediterranean, the Amazon, the West Indies, the Rockies, the Sahara, the Netherlands, the Far East, etc.
The is used in titles and place names including ***of***.	It is unlikely the Queen of Denmark has ever swum in the Bay of Bengal.
In the case of official job titles, ***the*** is usually dropped if there is only one such incumbent at any given time.	Margrethe II is (the) Queen of Denmark. Donald was elected chairman of the board.
The is also used in proper names consisting of noun(s) and/or adjective(s) + noun.	The Empire State Building, the English Channel, the White House, the Royal Festival Hall, the Rolling Stones, the Berlin Philharmonic (Orchestra), the British Museum, the Titanic, etc.
The is used in hotel names.	The Hilton Hotel, the Savoy, the Sheraton
The is used for newspapers.	The Times, The Baltimore Sun, The Australian

The is used for many larger organizations and institutions (not commercial enterprises), including those with initials that are normally spelled out.	The Commonwealth, the Fed, the EU, the WHO, the BBC, the FDA, the IAEA, etc.
Acronyms (initials read as whole words) are treated in the same way as regular names (proper nouns) and so do not require any article. If you are uncertain, please monitor usage in the media or consult a dictionary.	*Compare:* OPEC, NATO, ICANN, etc.
The is used for currencies.	The U.S. dollar has risen against the yen but fallen against the euro.
In front of people's names, ***the*** is only used to avoid confusion.	I'm the David Appleyard that lives in Japan.
The is used with the names of musical instruments.	Richard Clayderman plays the piano.
The can be used instead of a possessive form when referring to parts of the body and items of clothing.	She was hit on the head by a snowball (= a snowball hit her head). Joe grabbed the youth by the collar (= Joe grabbed the youth's collar).
Many forms of entertainment are preceded by the definite article ***the***, although not usually the medium of television.	I go to the cinema/movies, the theatre, the circus, the ballet, or the opera. In the daytime I listen to the radio, but in the evenings I prefer to watch television.

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The Zero Article

No article is needed before abstract nouns used in a general sense.	Love is all you need. Crime is a growing problem in the inner cities.
No article is needed for most places consisting of just the name of a person, or the name of a person/place followed by a noun.	Harrods, Macys, McDonald's, Lloyds Bank, St. Paul's Cathedral, Buckingham Palace, Kennedy Airport, Waterloo Station, Cambridge University, etc.
No article is usually needed in front of company names.	Cisco Systems, Microsoft, CBS, EMI, Hitachi, Lufthansa, Facebook, etc
An article is unnecessary in official job titles if there is only one person holding this position at any given time.	Philip Hammond is (the) Chancellor of the Exchequer. *Compare:* Philip Hammond is a Cabinet minister.
No article is needed in front of *most* roads, streets, parks, squares or bridges.	Oxford Street, Orchard Road, Central Park, Times Square, Tower Bridge, etc.
No article is needed in the names of single mountains, only mountain ranges.	While in New Zealand I climbed Mount Cook, which is the highest peak in the Southern Alps.
No article is needed before the names of meals, unless it is a formal occasion.	Roger had breakfast in his hotel room. *Compare:* I attended a dinner at the Rotary Club.
No article is needed for the names of games or sports.	Anna Kournikova plays tennis to keep in shape.
No article is needed before *bed, church, court, hospital, prison, school, college, university,* etc. when these are used for their primary purpose.	She stayed in bed on Sunday morning instead of going to church.
If, however, they are used for any other purposes, ***the*** is required.	The angry customer threatened to take him to court. The aging dissident was released from prison. After graduating from high school he went to university.

	Compare: She sat on the bed while she changed her socks.
	He entered the church to photograph its interior.
	Some decorators forgot a ladder in the prison, and found the place empty when they came back for it.
Articles are not needed in more abstract expressions of situation like *to/at sea, to/at/out of work, in/out of town, in/out of office,* etc.	My uncle first went to sea at the age of 15. He used to spend several months at sea.
	I go to work every day. I was at work yesterday.
If, however, you start talking about somewhere concrete or some place in particular, then the definite article ***the*** is required.	Jack's been out of work for almost a year.
	What's on in town (= my local town) this weekend?
	Pat's out of town (= the town she lives in) until Tuesday.
	This government has been in office for about a year now. The opposition parties would dearly love to vote it out of office.
	Compare: I went to the sea/seaside to swim.
	I stayed by the sea/seaside all day.
	What's on in the town (= a particular town, not necessarily my own) this weekend?
	How do I get out of the town?
	Sally spent all day in the office (= her workplace). She didn't get out of the office much before 7 o'clock.
No article is needed before television as a medium, only as an appliance.	Carol saw her brother on television.
	Compare: She had placed a photo of her dog on the television.
There is no article before a noun followed by a categorizing letter or number.	The students have just read section C.
	The Chicago train is about to depart from track 5.
	Her flight leaves from gate 32.
	He fell asleep on page 816 of *War and Peace*.
	She is staying in room 689.
To give added punch, articles are often dropped in the titles of books, movies, music and other works of art.	*Journey into Hell* sounds even more thrilling than *The Journey into Hell.*
Even if an article exists in the original title, as in J.R.R. Tolkien's *The Lord of the Rings*, people tend to omit this when making reference to the work in everyday speech or writing.	"Have you read *Lord of the Rings* right through?"
To save space and boost impact, articles are usually dropped in headlines.	"Iraqi Head Seeks Arms"
	"Stolen Painting Found by Tree"
	"Police Confirm Shotgun Attack on Bullet Train"

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EXHIBIT C

HARBRACE COLLEGE HANDBOOK

TWELFTH EDITION

JOHN C. HODGES
WINIFRED BRYAN HORNER
Texas Christian University
SUZANNE STROBECK WEBB
Texas Woman's University
ROBERT KEITH MILLER
University of St. Thomas

HARCOURT BRACE COLLEGE PUBLISHERS
Fort Worth • Philadelphia • San Diego • New York • Orlando • Austin • San Antonio
Toronto • Montreal • London • Sydney • Tokyo

These difficult decisions, whether **right** or **wrong**, affect all of us.
Competitive runners look **healthy**.

In the second of these two examples, *healthy* is a predicate adjective (subject complement), a word that modifies the subject and helps to complete the meaning of the sentence. See **4b** and **7**.

Suffixes such as *-al, -able, -ant, -ative, -ic, -ish, -less, -ous,* and *-y* may be added to certain verbs or nouns to form adjectives:

accept, repent (verbs)—*acceptable, repentant* (adjectives)
angel, effort (nouns)—*angelic, effortless* (adjectives)

The articles *a, an,* and *the* are often classified as adjectives.

(5) Adverbs *rarely* saw, call *daily, soon* left, left *sooner*
very short, *too* angry, *never* shy, *not* fearful
practically never loses, *nearly always* cold

As the examples show, adverbs modify verbs, adjectives, and other adverbs. In addition, an adverb may modify a verbal, a phrase, a clause, or even the rest of the sentence in which it appears:

I noticed a plane **slowly** circling overhead.
Honestly, Jo wasn't speeding.

The *-ly* ending nearly always converts adjectives to adverbs:

rare, honest (adjectives)—*rarely, honestly* (adverbs)

(6) Prepositions *on* a shelf, *between* us, *because of* rain
to the door, *by* them, *before* class

A preposition always has an object, which is usually a noun or a pronoun. The preposition establishes a relationship such as space, time, accompaniment, cause, or manner between its object and another word in the sentence. The preposition

with its object (and any modifiers) is called a *prepositional phrase*.

***With* great feeling**, Martin Luther King, Jr. expressed his dream ***of* freedom**.

The preposition may follow rather than precede its object, and it can be placed at the end of the sentence:

What was he complaining **about**? [*What* is the object of the preposition. Compare "He was complaining about what?"]

Words commonly used as prepositions:

about	besides	inside	since
above	between	into	through
across	beyond	like	throughout
after	but	near	till
against	by	of	to
along	concerning	off	toward
among	despite	on	under
around	down	onto	underneath
at	during	out	until
before	except	outside	up
behind	excepting	over	upon
below	for	past	with
beneath	from	regarding	within
beside	in	round	without

Phrasal prepositions (two or more words):

according to	by way of	in spite of
along with	due to	instead of
apart from	except for	on account of
as for	in addition to	out of
as regards	in case of	up to
as to	in front of	with reference to
because of	in lieu of	with regard to
by means of	in place of	with respect to
by reason of	in regard to	with the exception of

EXHIBIT D

The Gregg Reference Manual

A MANUAL OF STYLE, GRAMMAR, USAGE, AND FORMATTING

tribute edition 11

APPENDIX A

Glossary of Grammatical Terms

Active verb. See *Voice, active.*

Adjective. A word that answers the question *what kind* (*excellent* results), *how many* (*four* laptops), or *which one* (the *latest*) data. An adjective may be a single word (a *wealthy* man), a phrase (a man *of great wealth*), or a clause (a man *who possesses great wealth*). An adjective modifies the meaning of a noun (*loose* cannon) or a pronoun (*unlucky* me, I was *wrong*).

Adjective, predicate. See *Complement.*

Adverb. A word that answers the question *when, where, why, in what manner,* or *to what extent.* An adverb may be a single word (speak *clearly*), a phrase (speak *in a clear voice*), or a clause (speak *as clearly as you can*). An adverb modifies the meaning of a verb, an adjective, or another adverb. (See also *Clause, adverbial.*)

We closed the deal *quickly.* (Modifies the verb *closed.*)

Caroline seemed *genuinely* pleased. (Modifies the adjective *pleased.*)

My presentation went *surprisingly* well. (Modifies the adverb *well.*)

Adverbial conjunctive (or connective). An adverb that connects the main clauses of a compound sentence; for example, *however, therefore, nevertheless, hence, moreover, otherwise, consequently.* Also referred to as a *conjunctive adverb* or a *transitional expression.* (See also ¶¶138a, 178.)

Antecedent. A noun or a noun phrase to which a pronoun refers.

She is the *person who* wrote the letter. *(Person* is the antecedent of *who.)*

Owning a home has *its* advantages. *(Owning a home* is the antecedent of *its.)*

Appositive. A noun or a noun phrase that identifies another noun or pronoun that immediately precedes it. (See ¶¶148–150.)

Mr. Mancuso, *our chief financial officer,* would like to meet you.

My brother *Kyle* and his wife *Martha* are planning to move to Colorado.

Article. Considered an adjective. The *definite* article is *the;* the *indefinite* articles are *a* and *an.* (For a usage note on *a–an,* see pages 358–359.)

Auxiliary verb. See *Verb, helping.*

Case. The form of a noun or of a pronoun that indicates its relation to other words in the sentence. There are three cases: nominative, possessive, and objective. *Nouns* have the same form in the nominative and objective cases but a special ending for the possessive. (See ¶¶627–653.) The forms for *pronouns* are:

Nominative	Possessive	Objective
I	my, mine	me
you	your, yours	you
he, she, it	his, hers, its	him, her, it
we	our, ours	us
they	their, theirs	them
who	whose	whom

Gerund phrase. A gerund plus its object and modifiers; used as a noun.

Delaying payments to your suppliers will prove costly. (Gerund phrase as subject.)

Infinitive phrase. An infinitive plus its object and modifiers; may be used as a noun, an adjective, or an adverb. An infinitive phrase that is attached either to no word in a sentence or to the wrong word is called a *dangling infinitive.* (See ¶1082b.)

To get TF's okay on this purchase order took some doing. (As a noun; serves as subject of the verb *took.*)

The decision *to close the Morrisville plant* was not made easily. (As an adjective; tells what kind of decision.)

Janice resigned *to open her own business.* (As an adverb; tells why Janice resigned.)

NOTE: An infinitive phrase, unlike other phrases, may sometimes have a subject. This subject precedes the infinitive and is in the objective case.

I want *her to review this draft for accuracy. (Her* is the subject of *to review.)*

Participial phrase. A participle and its object and modifiers; used as an adjective.

The committee *considering your proposal* should come to a decision this week.

I prefer the cover sample *printed in blue and yellow.*

Prepositional phrase. A preposition and its object and modifiers; may be used as a noun, an adjective, or an adverb.

From Boston to Tulsa is about 1550 miles. (As a noun; serves as subject of *is.*)

Profits *in the automobile industry* are up sharply this quarter. (As an adjective; indicates which type of profits.)

You handled Dr. Waterman's objections *with great skill.* (As an adverb; indicates the manner in which the objections were handled.)

Prepositional-gerund phrase. A phrase that begins with a preposition and has a gerund as the object. (See *Gerund* and ¶1082c.)

By rechecking these figures before you release them, you deal with any questions raised by higher management. *(By* is the preposition; *rechecking,* a gerund, is the object of *by.)*

Essential (restrictive) phrase. A phrase that limits, defines, or identifies; cannot be omitted without changing the meaning of the sentence.

The study *analyzing our competitors' promotion activities* will be finished within the next two weeks.

Nonessential (nonrestrictive) phrase. A phrase that can be omitted without changing the meaning of the sentence.

The Stanforth-Palmer Company, *one of the country's largest financial services organizations,* is expanding into satellite communications.

Verb phrase. The individual words that make up the verb in a sentence. Sometimes a verb phrase includes an adverb. A verb phrase can function only as a verb.

You *should work together* with Nora on the report. (The verb phrase consists of the verb form *should work* plus the adverb *together.*)

Positive degree. See *Comparison, positive.*

Possessive case. See *Case, possessive.*

Predicate. That part of a sentence which tells what the subject does or what is done to the subject or what state of being the subject is in. (See also *Verb.*)

EXHIBIT E

MICHIGAN CATASTROPHIC CLAIMS ASSOCIATION PLAN OF OPERATION

ARTICLE I
Name

1.01. The name of this unincorporated, non-profit association of insurers shall be the Michigan Catastrophic Claims Association (hereinafter referred to as the "Association").

ARTICLE II
Purpose

2.01. It is the purpose of the Association to implement Act No. 136, Public Acts of 1978, being Section 3104 of the Michigan Insurance Code of 1956, as amended, MCLA 500.3104, creating a Catastrophic Claims Association to indemnify members against ultimate loss in excess of the applicable amount set forth in Section 3104(2) of the Michigan Insurance Code, sustained under the statutorily required personal protection insurance coverages under policies of insurance providing the security required by section 3101(1) of the Michigan Insurance Code for the owners and registrants of motor vehicles required to be registered in the State of Michigan, resulting from each loss attributable to an accident which occurs on or after July 1, 1978.

2.02. Nothing in this Article II shall be construed to enlarge or otherwise affect the rights and obligations of the association or its Members and 3103 Members as specified in the following sections of this Plan or in the Michigan Insurance Code of 1956, as amended.

ARTICLE III
Effective Date

3.01. This Plan of Operation shall become effective on the date on which both of the following conditions shall have been satisfied: (i) The Commissioner issues written approval of this Plan or, if not sooner disapproved by written order of the Commissioner, thirty days has elapsed after the date of its submission to the Commissioner, and (ii) this Plan has been approved by majority vote of the Board and ratified by majority vote of the members, each member being allotted the number of votes equal to the number of its total Written Car Years during the preceding fiscal year, which begins July 1 and ends June 30.

ARTICLE IV
Definitions

4.01. As used in this Plan of Operation:

(a) **"Board"** means the Board of Directors of the Association.

(b) **"Commissioner"** means the Director of the Department of Insurance and Financial Services, or such person as may succeed the Commissioner in the regulation of insurance in the State of Michigan.

(c) **"Michigan Insurance Code"** means the Michigan Insurance Code of 1956, as amended, as in force at the effective date of this Plan of Operation and as such law may thereafter be amended from time to time.

(d) **"Member"** means (i) each insurer engaged in writing insurance coverages under policies of insurance providing the security required by Section 3101(1) of the Michigan Insurance Code for the owners and registrants of motor vehicles required to be registered in the State of Michigan, and (ii) each group self-insurance pool providing motor vehicle security under Section 9 of Act No. 138 of the Public Acts of 1982, being Section 124.9 of the Michigan Compiled Laws. If two or more such insurers are "affiliated" as that term is defined in Section 1301 of the Michigan Insurance Code, then such insurers shall be deemed to constitute and be one Member of the Association for all purposes of this Plan of Operation except where the context indicates otherwise. The term "Member" does not include 3103 Members.

(e) **"3103 Member"** means each insurer engaged in writing insurance coverages under policies of insurance providing the security required by Section 3103(1) of the Michigan Insurance Code for the owners and registrants of motorcycles required to be registered in the State of Michigan. If two or more such insurers are "affiliated" as that term is defined in Section 1301 of the Michigan Insurance Code, then such insurers shall be deemed to constitute and be one 3103 Member of the Association for all purposes of this Plan of Operation except where the context indicates otherwise.

(f) **"Earned Car Years"** means the number of earned vehicle years (or the total number of earned vehicle months divided by twelve, if so reported) of insurance providing to any and all vehicles the security required by Sections 3101 and 3103 of the Michigan Insurance Code, written in the State of Michigan by each Member and 3103 Member, or all such members, as applicable. As used in the term "Earned Car Years" and in this definition, "car" includes motorcycle. The Board may establish, by resolution, the manner for determining Earned Car Years with respect to commercial or other vehicles where some other unit of exposure is used.

(g) **"Historical Vehicle"** means a vehicle that is a registered historic vehicle under section 803A or 803P of the Michigan Vehicle Code, 1949 PA 300 MCL 257.803A and 257.803P.

(h) **"Written Car Years"** means the number of net direct written vehicle years (or the total number of net direct written vehicle months divided by twelve, if so reported) of insurance providing to any and all vehicles, except Historic Vehicles, the security required by Sections 3101 and 3103 of the Michigan Insurance Code, written in the State of Michigan by each Member and 3103 Member, or all such members, as applicable. As used in the term "Written Car Years," "Car" includes motorcycle and truck tractor, but not truck trailer. All net direct written vehicle years or months of insurance written under high deductible, matching deductible, and fronting policies providing the security required by Sections 3101 and 3103 of the Michigan Insurance Code shall be included in a Member's or 3103 Member's Written Car Years. If a Member or 3103 Member can determine its Written Car Years, the Member or 3103 Member must do so. If a Member or 3103 Member uses some other unit of exposure besides Written Car Years, such as for commercial vehicles, the Member or 3103 Member must use a reasonably verifiable manner for determining a Written Car Year equivalent. The Board may establish, by resolution, the manner for determining a Written Car Year equivalent with respect to commercial or other vehicles where some other unit of exposure is used.

(i) **"Written Historic Vehicle Years"** means the number of net direct written Historic Vehicle years (or the total number of net direct written Historic Vehicle months divided by twelve, if so reported) of insurance providing to any and all Historic Vehicles the security required by Sections 3101 and 3103 of the Michigan Insurance Code, written in the State of Michigan by each Member and 3103 Member, or all such members, as applicable. As used in the term "Written Historic Vehicle Years," "Historic Vehicle" includes historic motorcycle. For each Historic Vehicle covered by a policy of insurance providing the security required by Sections

3101 and 3103 of the Michigan Insurance Code, a member must obtain and maintain proof from the State of Michigan that the vehicle is registered as a Historic Vehicle.

(j) **"Reimbursable Ultimate Loss"** means the actual loss payments (exclusive of optional wage loss payments and of wage loss, medical, hospital and related costs not required to be paid by a Member because of the coordination of benefits) in excess of the applicable amount set forth in section 3104(2) of the Michigan Insurance Code, sustained under personal protection insurance coverages under policies of insurance providing the security required by section 3101(1) of the Michigan Insurance Code for the owners and registrants of motor vehicles required to be registered in the State of Michigan, which a Member is obligated to pay by reason of an occurrence and which are paid or payable by the Member. For purposes of determining the amount applicable under section 3104(2), a policy of insurance is considered to be issued or renewed on the date the policy (or renewal, as the case may be) becomes effective. If a Member is obligated to pay such loss amounts to two or more claimants under one or more policies of insurance by reason of a single occurrence, the "Reimbursable Ultimate Loss" shall be the amount by which the aggregate of such actual loss payments exceed the applicable amount set forth in section 3104(2) of the Michigan Insurance Code (except as set forth in the next sentence). "Reimbursable Ultimate Loss" includes losses paid or payable on policies written by a Member on behalf of the Michigan Automobile Insurance Placement Facility, but losses payable under such a policy having an effective date on or after January 1, 1981, shall not be aggregated with losses under any similar policies or with losses under any other policy for purposes of determining the "Reimbursable Ultimate Loss" sustained by the Member. "Reimbursable Ultimate Loss" shall not include loss adjustment, investigating service or legal fees (except as otherwise provided in Section 10.06 of this Plan) or any other claim expenses (except as otherwise provided in Section 10.04 of this Plan); nor interest or court costs; nor exemplary or punitive damages; nor any amounts payable under the provisions of the Uniform Trade Practices Act, MCLA 500.2001 et seq., (as presently in force or hereafter amended), or similar provisions of law in another jurisdiction; nor any amounts payable for refusal by a Member to pay amounts due under a policy of insurance (unless the Association previously has specifically approved in writing the action taken by the Member out of which the claim arises).

ARTICLE V
Membership

5.01. Membership. Every insurer who, by virtue of the provisions of Section 3104(1) of the Michigan Insurance Code, as amended, is required to be a member of the Association as a condition of its authority to transact insurance in the State of Michigan, shall be a Member. (Notwithstanding the foregoing, the Assigned Claims Facility and Plan created pursuant to Section 3171 of the Michigan Insurance Code, shall not be a member of the Association.) Every group self-insurance pool providing motor vehicle security under Section 9 of Act No. 138 of the Public Acts of 1982, shall be a Member.

5.02. 3103 Membership. Every insurer who, by virtue of the provisions of Section 3103(1) of the Michigan Insurance Code, as amended, is required to be a member of the Association for assessment purposes as a condition of its authority to transact insurance in the State of Michigan, shall be a 3103 Member.

5.03. Withdrawal. An insurer may withdraw as a Member or 3103 Member of the Association upon ceasing to write insurance which provides the security required by Section 3101 or Section 3103 in the State of Michigan, provided that (i) such withdrawal shall be effective as of the day following the day on which the insurer's premium obligation is finally determined for the Association's fiscal year during which the insurer ceased to provide such insurance within the State of Michigan, (ii) all unpaid premiums and interest which have been charged to the withdrawing insurer shall be due and payable as of the effective date of the

withdrawal, and (iii) the withdrawing insurer shall continue to be bound by the Plan of Operation with respect to the performance and completion of any unsatisfied liabilities and obligations (including the continuing obligation to submit reports regarding claims pursuant to Section 10.01) to the Association. A group self-insurance pool may withdraw as a Member of the Association upon ceasing to provide motor vehicle security, provided that (i) such withdrawal shall be effective as of the day following the day on which the pool's premium obligation is finally determined for the Association's fiscal year during which the pool ceased to provide such security within the State of Michigan, (ii) all unpaid premiums and interest which have been charged to the withdrawing pool shall be due and payable as of the effective date of the withdrawal, and (iii) the withdrawing pool and its members shall continue to be bound by the Plan of Operation with respect to the performance and completion of any unsatisfied liabilities and obligations (including the continuing obligation to submit reports regarding claims pursuant to Section 10.01) to the Association.

5.04. Merger. When a Member or 3103 Member has been merged or consolidated into another insurer or another insurer has reinsured such a member's entire business which provide the security required by Section 3101 or Section 3103 in this State, the member and the insurer which is the successor in interest of the member shall be liable for the member's obligations to the Association. When a member group self-insurance pool has been merged or consolidated into another pool which provides the security required by law, the member pool and the pool which is its successor in interest shall be liable for all the former's obligations to the Association.

5.05. Michigan Automobile Insurance Placement Facility. As used in this Plan of Operation, "policies written on behalf of the Michigan Automobile Insurance Placement Facility" means policies of insurance issued by a Member pursuant to a loss sharing plan as authorized by Sections 3320(1)(c) and 3330(1) (e) of the Insurance Code. Except as otherwise provided herein, policies written by a Member on behalf of the Michigan Automobile Insurance Placement Facility (hereinafter "MAIPF") shall be treated in the same manner as any other policy written by that member. Policies written by a Member under a special risk distribution procedure as authorized by Section 3320 (1) (a) of the Insurance Code shall be treated in the same manner as policies issued by the Member as voluntary business (including for purposes of aggregation under Section 4.01 (f)).

ARTICLE VI
Board of Directors

6.01. Powers. The Board of Directors shall have responsibility for the administration of the Plan and the management of the affairs and operation of the Association, consistent with the Plan of Operation and the provisions of the Michigan Insurance Code.

6.02. Numbers, Selection and Qualifications. The Board of Directors shall consist of five (5) Members, each of whom shall be appointed by the Commissioner pursuant to Section 3104(11) of the Insurance Code.

6.03. Term. A director shall hold office for the term for which appointed and until the successor shall have been appointed and qualified, or until resignation. All Directors appointed to serve terms (other than a vacancy) will be appointed for a four year term.

6.04. Ex Officio Member of the Board. The Commissioner, or a representative designated by the Commissioner, shall be an ex officio member of the Board without vote (but shall not be counted for purposes of determining if a quorum is present).

6.05. Resignations; Vacancies. The resignation of a director is effective upon receipt by the Association of written notice thereof or at such subsequent time as is set forth in the notice of resignation. Any vacancy in the Board of Directors shall be filled by appointment by the Commissioner, and the Member so appointed shall hold office for the unexpired term in respect of which such vacancy occurred.

6.06. Appointment of Designated Representatives. Each member of the Board shall select a qualified

person as its designated representative who shall act for such member in all matters, including attendance and voting at all meetings of the Board. In the event of the absence of the designated representative from any meeting, the member shall appoint a substitute representative who may attend with like powers in the designated representative's place and stead.

6.07. Reimbursement for Expenses. Members of the Board shall serve without compensation, but they may be reimbursed, to the extent and in the manner approved by the Board, for their actual and necessary expenses incurred in attendance at Board meetings, committee meetings or otherwise in connection with Association business. The Board may authorize reimbursement of the actual and necessary expenses incurred by others in serving on committees established by the Board or otherwise assisting the Board in the performance of its duties.

ARTICLE VII
Meetings of Board of Directors

7.01. Quorum and Votes. At any meeting of the Board of Directors, four (4) members of the Board shall constitute a quorum for the transaction of business, and the acts of a majority of the Directors present at a meeting at which a quorum is present shall be the acts of the Board. Each member of the Board shall have one vote, and the Chair shall retain the right to vote on all issues.

7.02. Annual Meeting. A regular annual meeting of the Board of Directors shall be held at such time as is designated by the Board. The annual meeting shall be held at the office of the Association or at such other place within the State of Michigan as is designated by the Board. At each annual meeting or at a special meeting held pursuant to Section 7.03, the Board shall:

(1) Review the Plan of Operation and determine if any changes are necessary.

(2) Review each outstanding contract and determine if any changes are necessary.

(3) Review the premium charges and determine the adequacy thereof.

(4) Review the arrangements with any custodian bank or trust company.

(5) Review the adequacy of the reports, information and statistics submitted by Members and 3103 Members and determine any necessary improvements or action.

(6) Receive and consider reports from the standing committees and other committees.

(7) Discuss and consider such other matters as may be appropriate.

7.03. Special Meetings. Special meetings of the Board of Directors may be called by or at the request of the Chair, the Commissioner, or any three members of the Board. Directors shall be notified of any special meeting of the Board at least three (3) days in advance of the meeting, and such notice shall state the time, place and purpose of the meeting. Any Director may waive notice of any meeting.

7.04. Participation by Telephonic or Electronic Means. A member of the Board of Directors may participate in any meeting of the Board by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting may hear and otherwise communicate with each other. Participation in a meeting pursuant to this section constitutes presence in person at the meeting. In addition to the foregoing, members of the Board may vote by telephone or electronic communication such as email.

7.05. Written Consent. Any action required or permitted at any meeting of the Board, may be taken without a meeting, without prior notice, and without a vote, if all of the Directors consent thereto in writing.

ARTICLE VIII
Officers

8.01. The Board of Directors shall elect a Chair, and may elect a Vice-Chair, at its annual meeting, and may elect such other officers from time to time as it shall deem desirable.

(a) The Chair shall preside at all meetings of the Board of Directors. The Chair may sign any deeds, mortgages, bonds, contracts or other instruments which the Board of Directors has authorized to be executed. The Chair shall discharge such other duties as may be incidental to the office or as shall be prescribed by the Board of Directors from time to time. The Chair shall serve as an ex officio member of all committees.

(b) In the absence of the Chair, the Vice-Chair, if one is elected, shall perform the duties of the Chair.

ARTICLE IX
Premiums

9.01. Calculation of Premiums. The Board shall determine the Total Premium, the Average Total Premium Per Car and Historical Vehicle, the Average Premium Per Car, and the Average Premium Per Historical Vehicle prior to or at the earliest practicable time during the period for which the premium is applicable.

(a) The Board shall calculate a **"Total Premium"** sufficient to cover the expected losses (including incurred but not reported losses for the period), charges payable to reinsurers under reinsurance agreements, and expenses of the Association (including any costs or expenses of indemnification payable pursuant to Article XVIII) which the Association will likely incur during each annual (or other) period for which the premium is applicable. In addition to the method described in section 9.08 for the return of surplus to Members and 3103 Members, the total premium may be adjusted for any excess or deficiency in premiums from previous periods and, at the discretion of the Board, any such excesses or deficiencies may be fully adjusted in a single period or may be adjusted over several periods ratably or in such proportion as the Board may deem advisable.

(b) An **"Average Total Premium Per Car and Historical Vehicle"** is calculated by dividing the Total Premium determined pursuant to section 9.01.(a) by the sum of the estimated total Written Car Years of all Members and 3103 Members during the period to which the premium applies and 100% of the Written Historical Vehicle Years of all members and 3103 Members during the period to which the premium applies.

(c) An **"Average Premium Per Car"** is calculated by dividing the total premium determined pursuant to section 9.01.(a) by the sum of the estimated total Written Car Years of all Members and 3103 Members during the period to which the premium applies and 20% of the Written Historical Vehicle Years of all members and 3103 Members during the period to which the premium applies.

(d) An **"Average Premium Per Historical Vehicle"** is calculated by multiplying the Average Premium Per Car as determined pursuant to section 9.01.(c) by 20%.

9.02. Preliminary Premium Assessment. The Association shall charge to each Member and 3103 Member, prior to or at the earliest practicable time during the period for which the premium is applicable, a preliminary premium assessment to be calculated as follows:

(a) For the annual period beginning July 1, 2002, the preliminary premium assessment for each Member and 3103 Member shall be an amount equal to such member's total Earned Car Years written during the 2001 calendar year, multiplied by the Average Premium Per Car for the annual period beginning July 1, 2002.

(b) For annual (or other periodic) premium assessment periods beginning on or after July 1, 2003, the preliminary premium assessment for each Member and 3103 Member shall be an amount equal to the sum of (i) such member's total Written Car Years during the immediately preceding assessment period (or such other annualized period as the Board may select), multiplied by the Average Premium Per Car for the current assessment period, and (ii) such member's total Written Historical Vehicle Years during the immediately preceding assessment period (or such other annualized period as the Board may select), multiplied by the Average Premium Per Historical Vehicle for the current assessment period.

The preliminary premium shall be allocated among and charged to Members and 3103 Members on such periodic basis as the Board may establish. The periodic charges need not be uniform in amount.

9.03. Final Premium Assessment. As soon as is practicable after the end of each annual (or other) period for which the premium is applicable, the Association shall charge to each Member and 3103 Member a final premium assessment for the period just completed. The final premium payable by each Member and 3103 Member will be determined as follows:

(a) For the annual premium assessment period beginning July 1, 2002, the final premium assessment for each Member and 3103 Member shall be an amount equal to such member's total Written Car Years and Written Historical Vehicle Years during such period, multiplied by the Average Total Premium Per Car and Historical Vehicle for the period.

(b) For annual (or other periodic) premium assessment periods beginning on or after July 1, 2003, the final premium assessment for each Member and 3103 Member shall be an amount equal to the sum of (i) such member's total Written Car Years during such period, multiplied by the Average Premium Per Car for the period, and (ii) such member's total Written Historical Vehicle Years during such period multiplied by the Average Premium Per Historical Vehicle for the period.

9.04. Application of Prior Premium Payments. Any payments made by a Member or 3103 Member pursuant to Section 9.02 will be applied against the premium ultimately payable for the completed period pursuant to Section 9.03 and each Member and 3103 Member will be charged for any deficiency or credited for any excess (such credit, at the option of the Board, to be applied against premiums subsequently due pursuant to Sections 9.02 and 9.03 or refunded to the Member or 3103 Member).

9.05. Payment. Premiums charged under Sections 9.02 and 9.03 shall be paid by Members and 3103 Members in full within such period of time after the premium charge is billed by the Association as the Board may establish. Members and 3103 Members shall report to the Association such information necessary for the calculation of a premium as the Board may require on forms prescribed by the Board.

9.06. Premium Audits.

In this Section 9.06, the term "Member" shall include both "Member" and "3103 Member."

(a) **Right to Audit.** The Association shall have the right to audit and verify any Member's determination of a premium payable under this Article IX. In connection with any such audit, a Member shall provide such documentation supporting its determination of the premium payable as the Association may request. Any costs incurred in gathering and providing documentation requested by the Association in connection with any such audit, shall be borne by the Member.

(b) **Agreed-Upon Procedures Audits.** An agreed-upon procedures audit is one in which an independent auditor engaged by a Member, or a Member (if the Member qualifies as a low volume writer), issues a report and findings based on specific procedures designed to validate Written Car Years reported to the Association. Two types of procedures are used for agreed-upon procedures audits: standard procedures and low volume procedures. Members writing 5,000 or more Written Car Years of insurance (on a Member group basis) must engage an independent auditor and complete the standard procedures. Members writing less than 5,000 Written Car Years of insurance (on a Member group basis) must complete the low volume procedures, but need not engage an independent auditor. An agreed-upon procedures audit shall be conducted at least once every three years for each Member, and will encompass the previous three years. The Board may lengthen or shorten the time between agreed-upon procedures audits. A Member shall bear the costs of an independent auditor's fees in connection with an agreed-upon procedures audit.

(c) **Special Audits.** When the Association concludes through an agreed-upon procedures audit or otherwise that a Member's determination of a premium payable cannot be reliably validated without further work by an independent auditor, the Association may engage an independent auditor to conduct a special audit to determine the premium that the Member should have paid. A Member shall bear the costs of an independent auditor's fees in connection with a special audit.

(d) **Overpayments and Underpayments of Premium.** With respect to any underpayment or overpayment of premium, the amount the Association collects or reimburses shall reflect only such amount as is supported by reasonably verifiable data. When determining the amount of an underpayment or overpayment, actual data rather than extrapolated data shall be used to the extent reasonably possible, but extrapolated data may be used if it is reasonably verifiable.

9.07. Mutual Waiver of Limitations Period for Overpayments and Underpayments. Members, 3103 Members, and the Association, agree to waive any statute of limitation in relation to any action, suit, or claim relating to the collection or reimbursement, as applicable, of any underpayment or overpayment of premium.

9.08. Policies on Behalf of MAIPF. Any Member who writes policies on behalf of the MAIPF is ultimately liable for premiums based upon car years so written; nevertheless, that portion of a Member's premium that is based upon policies written on behalf of MAIPF may be billed to and paid by either the Member or MAIPF for the account of the Member.

9.09. Allocation of Liabilities. The Board shall establish, by resolution, the method for redistributing subsequently determined excesses or deficiencies in the premium assessment for a particular period. In any dispute as to the method to be used, the determination of the Board shall be final and the Member or 3103 Member shall be bound thereby.

9.10. Lump Sum Distribution of Surplus. At the discretion of the Board, excesses in premiums from previous periods may be adjusted at any time by way of a lump sum distribution of surplus to Members and 3103 Members. In the event the Board determines to adjust excesses in such manner, the distribution to each Member and 3103 Member shall be calculated in a manner determined by the Board. Without limiting the means available to the Board under the preceding sentence for calculating the distribution, the Board may base the amount of the distribution to each Member and 3103 Member on the sum total of (a) the number of vehicles subject to a premium assessment by the association for which the security required by section 3101(1) or 3103(1) of the Michigan Insurance Code is in effect as of a date specified by the Board by resolution, and (b) the number of vehicles subject to a premium assessment by the association for which the security required by section 3101(1) or 3103(1) of the Michigan Insurance Code is not in effect as of the specified date, but for which comprehensive and/or collision coverage is in effect as of the specified date and the security otherwise required by section 3101(1) or 3103(1) of the Michigan Insurance Code is not required because the vehicle is not being "driven or moved upon a highway" as that term is used in section 3101(1) of the Michigan Insurance Code.

ARTICLE X
Operations

10.01. Reports Regarding Claims. Members and 3103 Members shall report to the Association such information as the Board may require on forms prescribed by the Board, including the following:

(a) As soon as practicable after the loss occurrence, Members shall report each claim which, on the basis of the injuries or damages sustained, may reasonably be anticipated to result in a Reimbursable Ultimate Loss, and for purposes of reporting the Member shall consider itself legally liable for the injuries and damages. Without limiting the claims that Members shall report to the Association, Members shall report claims involving: (i) head injuries resulting in traumatic brain injury; (ii) spinal cord injuries resulting in quadriplegia or paraplegia; (iii) burns involving 50% or more of the body; (iv) amputation of a major limb or multiple amputations; and (v) any other injuries with a combined outstanding loss reserve and payments totaling $300,000 or more, or such amount as the Board sets from time to time (for losses occurring before July 1, 2011, this amount is $200,000);

(b) With respect to any such claim described in subsection (a), Members shall timely submit to the MCCA for preapproval all proposed personal protection insurance claim settlements that involve (i) any written settlement agreement of a disputed claim; (ii) any agreement setting an attendant care rate; or (iii) any agreement to purchase or modify a residence or a vehicle. Members must submit all such agreements to the Association before they become binding.

(c) With respect to any such claim described in subsection (a), Members shall submit to the MCCA for preapproval all proposed arbitration agreements or other binding alternative dispute resolution agreements (including an acceptance of a case evaluation award under the Michigan Court Rules);

(d) Promptly, or on such periodic basis as the Board may prescribe, Members shall report any changes in the amount of the reserve established with respect to any such claim or of any subsequent developments likely to materially affect the interest of the Association in the claim; and

(e) At such times as the Board may fix, Members shall report such loss and expense data, statistics and other information as the Board may require.

10.02. Inadequate or Untimely Reports. If a Member or 3103 Member refuses to timely submit the reports or information required of it pursuant to Section 10.01 or otherwise, or if the Board should determine that the reports and information submitted by a Member or 3103 Member are unreliable or incomplete, the Board may, at the member's expense, direct that an authorized representative of the Association (which may be another member) shall audit and inspect such member's records and compile the required information and data. Where a Member or 3103 Member fails to obtain preapproval of an agreement covered by a reporting requirement of the Association, the Association may, at its discretion, take such actions authorized in the Claim Guide duly approved by the Board. Under the Claim Guide, when a Member or 3103 Member fails to obtain preapproval of a settlement agreement (as described in Section 10.01(b)), the Association may, at its discretion, take any of the following actions after a Member or 3103 Member makes a request for reimbursement: approve the settlement and reimburse the amount requested; deny a portion or all of the requested reimbursement; or agree to place any disputed portion through alternative dispute resolution.

10.03. Association's Data. The Association shall maintain such loss and expense data as to its liabilities as the Board deems appropriate and necessary.

10.04. Reimbursement.

(A) The Association shall reimburse each Member for 100% of the Reimbursable Ultimate Loss sustained by such Member resulting from a loss attributable to an accident which occurs on or after July 1, 1978. The Association shall also reimburse each insurer and group self-insurance pool (who shall be deemed to be a "Member" for purposes of Articles X and XI) who has withdrawn as a Member of the Association, or who has succeeded to the obligations of a former member by way of merger or consolidation, for 100% of the Reimbursable Ultimate Loss sustained by such former member, insurer or pool, as the case may be, resulting from a loss attributable to an accident which occurs on or after July 1, 1978.

(B) With respect to any reimbursable ultimate loss eligible for reimbursement under Section 10.04(A), if the amount of the loss has been reduced through use of a medical bill repricing or other medical expense cost containment method, the Association shall reimburse for the reduced loss amount plus the actual cost of repricing or cost containment, but such reimbursement amount shall be limited to the before repricing amount.

10.05. Reimbursement Payments. With respect to any claim which involved a Reimbursement under Section 10.04 of this Plan, the Member shall submit to the Association an itemized account, on such forms and with such supporting documentation of claims payments or expenses as the Board may prescribe, as soon as practicable after the close of the fiscal quarter for which reimbursement is sought. A Member may elect reimbursement on a monthly basis if its surplus is $10 million or less as shown on the most recent annual statement on file with the commissioner of insurance at the time the request for reimbursement is made. The Association shall, upon verification of the propriety and amount of the payments made and the Member's entitlement to reimbursement therefor, reimburse the Member the amount due it. Any such reimbursement arising under a policy issued by a Member on behalf of the MAIPF, may be paid directly to the Member or to MAIPF for the account of the Member. If responsibility for making payments under such a policy is transferred from one Member to another by MAIPF, reimbursement made under that policy will be as directed by MAIPF.

10.06. Recovery from Other Sources. Whenever a Member recovers from a third party an amount for which it has already been reimbursed by the Association, the Member shall promptly turn such recovered monies over to the Association to the extent of any reimbursement theretofore received, provided that the Board may permit a Member to retain therefrom such amount as the Board deems reasonable and necessary attorney fees and litigation costs incurred in connection with obtaining the recovery from the third party.

10.07. Review of Claims Procedures and Practices. The Association shall have the right, on the giving of reasonable notice, to review through its authorized representative (which may be another member) the claims procedures and practices of any member and to audit and inspect.

10.08. Inadequate Claims Procedures and Practices. Members shall adjust claims with the same level of care, and using the same claims procedures and practices, both before and after the ultimate loss sustained reaches the applicable amount stated in section 3104 (2) (a)-(k). If, in the judgment of the Board, a claims procedure or practice of a member is inadequate to properly service the liabilities of the Association or jeopardizes the interests of the Association, the Association may, at the member's expense, undertake or contract with another person (including another member) to adjust, or assist in the adjustment of, a claim or claims for the member creating a potential liability to the Association.

ARTICLE XI
Remedies for Defaults

11.01. Remedies for Default. If any Member or 3103 Member fails to timely pay the premium or interest charged to it, fails to report its Written Car Years timely or accurately, fails to maintain reasonably verifiable documentation supporting its determination of the premium payable to the Association, or fails to perform a duty owed to the Association under this Plan of Operation or the Michigan Insurance Code, the Association may avail itself of any of the following remedies, as applicable:

(a) Charge interest on all past due amounts as provided in section 11.02;

(b) Institute legal action to recover any amounts due, to compel compliance with this Plan of Operation, or to pursue any other claim or right available to the Association;

(c) Invoke the assistance of the Commissioner with respect to such action as may be permitted under the Michigan Insurance Code;

(d) At the discretion of the Board, offset any past due amount or deficiency against any reimbursement payment then or thereafter payable to the Member or 3103 Member under Section 10.05 for the purpose of satisfying in full the liabilities and obligations of the Member or 3103 Member to the Association;

(e) At the discretion of the Board, authorize the taking of such other action as it deems proper and appropriate.

Any legal and other expenses incurred by the Association as the result of a Member's or 3103 Member's default, shall be charged to and paid by the Member or 3103 Member.

11.02. Interest Charges. If any Member or 3103 Member fails to timely pay the premium or interest charged to it, interest shall be charged the Member or 3103 Member on all past due amounts or deficiencies at such rate as the Board may establish from time to time. Any waiver by the Association of its right to charge interest, or any reduction in the interest rate charged, whether such waiver or reduction has already occurred or occurs in the future, shall not obligate the Association to continue to waive or reduce interest charges.

ARTICLE XII
Insolvency of a Member

12.01. Apportionment of Liability Among Members. If a domiciliary receiver is appointed for a present or former Member or a present or former 3103 Member for purposes of liquidation, any liability of such insurer

left unsatisfied shall be apportioned among the remaining members of the Association in proportion to the premium charges made by the Association (exclusive of any premium charged the insolvent insurer) pursuant to Section 9.03 for the period within which the receiver was appointed by the final order of a court having jurisdiction over such insolvent insurer. The unsatisfied liability of the insolvent insurer so apportioned among the members of the Association, shall be part of the premium payable by such members pursuant to Section 9.03.

12.02. Apportionment of Recovery. The Association shall have, on behalf of all of the remaining members, all rights allowed by law against the estate or funds of the insolvent Member or 3103 Member for sums due the Association, and any amounts received by the Association as a result thereof shall be credited to the members in proportion to the share of the insolvent insurer's liability theretofore charged to them pursuant to Section 12.01. At the discretion of the Board, such credits may be handled in the manner described in Section 9.04.

ARTICLE XIII
Administration

13.01. Address. The official address of the Association shall be the address of the Association's administrative office unless otherwise designated by the Board.

13.02. Performance of Administrative Functions. The Board may employ such persons, firms or corporations as it deems appropriate to perform the administrative functions necessary for the performance of any of the duties imposed on the Board or the Association. The Board may use the mailing address of such person, firm or corporation as the official office address of the Association. Such person, firm or corporation shall keep such records of its activities as may be required by the Board.

13.03. Bank Accounts. The Board may open bank accounts for use in Association business. Reasonable delegation of deposit and withdrawal authority to such accounts for Association business may be made consistent with prudent fiscal policy.

13.04. Borrowings. The Board may borrow money from any person or organization, including a member insurer, as the Board in its judgment deems advantageous for the Association.

13.05. Reinsurance. The Board may reinsure all or any portion of the potential liability of the Association, with reinsurers licensed to transact insurance in Michigan or approved by the Commissioner. The Board may contract with such reinsurer(s) to perform any of the activities of the Association referred to in Article X and any other administrative functions of the Association.

13.06. Office, etc. The Board may purchase or lease such housing and equipment, and may employ such personnel, as it deems necessary to assure the efficient operation of the Association.

13.07. Contracting with Others. The Board may contract with one or more persons, firms or corporations (including a member) for such goods and services as may be required to carry out the efficient operation of the Association, including claims management, actuarial services, investment services and legal services.

13.08. Investments. All monies due the Association for premiums or interest shall be paid to the Association and held, disbursed, invested and reinvested, and securities acquired by investment of the Association's cash funds or otherwise may be disposed of, by the Board in accordance with this Plan of Operation and such resolutions and rules as may be adopted by the Board, provided, however, that investments made hereunder shall only be such as may be made by domestic casualty companies under the Michigan Insurance Code and known as capital and reserve investments.

13.09. Income on Association's Assets. All profit or loss arising from the investment of funds held by the Association, and all income from such investment of funds, shall be added to and become a part of, during the period realized or received by the Association, the general funds of the Association and may be used for the purpose of paying expenses of the Association and Reimbursable Ultimate Losses.

13.10. Adoption of Rules, etc. The Board may adopt reasonable rules and policies for the administration of the Association, enforce such, and delegate authority, as the Board considers necessary to assure the proper administration and operation of the Association consistent with this Plan of Operation.

ARTICLE XIV
Committees

14.01. Standing Committees. The Chair of the Board shall appoint standing committees (which may, but need not, consist of members of the Association) as follows:

a) An Actuarial Committee which shall make recommendations to the Board regarding the premium charges for each period and report to the Board regarding the sufficiency of prior premium charges.

b) An Audit Committee, which shall, itself or through a designated representative, review and audit the books and records of the Association and report to the Board on the financial condition of the Association.

c) A Claims Committee, which shall review claims procedures and practices of member companies, generally or with respect to specific cases, pursuant to procedures approved by the Board, and make recommendations to the Board, and take such action as may be deemed proper pursuant to Article X.

d) A Communications Committee, which shall oversee the Association's communications with its members and third parties, and make recommendations to the Board regarding such communications.

e) An Information Technology Committee, which shall assess the Association's technology strategy and make recommendations regarding technology investments.

f) An Investment Committee, which shall establish the investment policy of the Association, subject to such guidelines as may be established in this Plan of Operation and by the Board.

g) A Personnel Committee, which shall make recommendations to the Board relating to staffing, compensation, and employment policies of the Association.

14.02. Other Committees. The Chair may appoint such other standing committees or special committees as may be deemed necessary for the transaction of business and conduct of affairs.

ARTICLE XV
Complaints and Appeals

15.01. Any Member or 3103 Member or other interested person aggrieved with respect to any action or decision of the Board or the Association, or any committee or representative thereof, may within thirty (30) days file a complaint with the Board of Directors concerning such. The Board, or a committee appointed by it, shall hear and render a determination upon the complaint within a reasonable length of time after receipt thereof.

ARTICLE XVI
Records and Reports

16.01. Minutes. A written record of the important proceedings of each Board meeting shall be made. The original of this record shall be retained by the Chair, with copies furnished to each Board member.

16.02. Annual Reports. The Board shall make an annual report to the Commissioner and to each Member and 3103 Member. Such report shall include a review of the Association's transactions, activities and affairs and an accounting of its income and disbursements for the past year.

16.03. Examination of Records, etc. The books of account, records, reports and other documents of the Association shall be open to inspection by Members and 3103 Members only at such times and under such conditions and regulations as the Board shall reasonably determine. Claim, underwriting and other nonpublic information relating to any specific risk, claimant, plaintiff or defendant shall be treated as confidential by the Association and will not be disclosed unless the Association is legally required or permitted to do so.

ARTICLE XVII
Fiscal Year

17.01. The fiscal year of the Association shall begin on the first day of July and end on the last day of June of each year, or on such other dates as the Board may determine by a duly adopted resolution.

ARTICLE XVIII
Limitation of Liability and Indemnification

18.01. Limitation of Liability. A director is not personally liable to the Association or its Members and 3103 Members for monetary damages for a breach of the director's fiduciary duty except for (i) a breach of the director's duty of loyalty to the Association or its Members and 3103 Members, (ii) acts or omissions not in good faith of that involve intentional misconduct or knowing violation of law, (iii) a transaction from which the director derived an improper personal benefit or (iv) acts or omissions occurring before January 1, 1989.

18.02. Non-Derivative Actions. Subject to all of the other provisions of this Article XVIII, the Association shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative and whether formal or informal, other than an action by or in the right of the Association, by reason of the fact that the person is or was a director or officer of the Association, including a member of any committee or subcommittee of the Association, against expenses, including attorneys' fees, judgments, penalties, fines, and amounts paid in settlement actually and reasonably incurred by him or her in connection with such action, suit or proceeding if the person acted in good faith and in a manner the person reasonably believed to be in or not opposed to the best interests of the Association or its members, and with respect to any criminal action or proceeding, if the person had no reasonable cause to believe his or her conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which the person reasonably believed to be in or not opposed to the best interests of the Association or its members, and, with respect to any criminal action or proceeding, had reasonable cause to believe that his or her conduct was unlawful.

18.03. Derivative Actions Subjects to all of the provisions of this Article XVIII, the Association shall indemnify any person who was or is a party to or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the Association to procure a judgment in its favor by reason of

the fact that the person is or was a director or officer of the Association, including a member of any committee or subcommittee of the Association, against expenses, including actual and reasonable attorneys' fees, and amounts paid in settlement incurred by the person in connection with such action or suit if the person acted in good faith and in a manner the person reasonably believed to be in or not opposed to the best interests of the Association or its members. However, indemnification shall not be made for any claim, issue or matter in which such person has been found liable to the Association unless and only to the extent that the court in which such action or suit was brought has determined upon application that, despite the adjudication of liability but in view of all circumstances of the case, such person is fairly and reasonably entitled to indemnification for the expenses which the court considers proper.

18.04. Expenses of Successful Defense. To the extent that a person entitled to indemnification has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in Sections 18.02 or 18.03 above, or in defense of any claim, issue or matter in the action, suit or proceeding, the person shall be indemnified against expenses, including actual and reasonable attorneys' fees, incurred by such person in connection with the action, suit or proceeding and any action , suit, or proceeding brought to enforce the mandatory indemnification provided by this Section 18.04.

18.05. Contract Right; Limitation on Indemnity. The right to indemnification conferred in this Article XVIII shall be a contract right, and shall apply to services of a director or officer as an employee or agent of the Association as well as in such person's capacity as a director or officer. Except as provided in section 18.04 above, the Association shall have no obligations under this Article XVIII to indemnify any person in connection with any proceeding, or part thereof, initiated by such person without authorization by the Board.

18.06. Determination That Indemnification is Proper. Any indemnification under Section 18.02 and 18.03 above (unless ordered by a court) shall be made by the Association only as authorized in the specific case upon a determination that indemnification of the person is proper in the circumstances because the person has met the applicable standard of conduct set forth in Sections 18.02 and 18.03, whichever is applicable. Such determination and evaluation shall be made in any of the following ways:

(1) By a majority vote of a quorum of the Board consisting of directors who were not parties to the action, suit or proceeding.

(2) If the quorum described in clause (1) above is not obtainable, then by a majority vote of a committee of directors duly designated by the Board who are not parties (or whose individual representatives were not parties) to the action. The committee shall consist of not less than two (2) disinterested directors.

(3) By independent legal counsel in a written opinion.

(4) By vote of the members.

18.07. Proportionate Indemnity. If a person is entitled to indemnification under Sections 18.02 and 18.03 above for a portion of expenses, including attorneys' fees, judgments, penalties, fines and amounts paid in settlement, but not for the total amount thereof, the Association shall indemnify the person for the portion of the expenses, judgments, penalties, fines, or amounts paid in settlement for which the person is entitled to be indemnified.

18.08 Expense Advance. The Association may pay or reimburse the expenses incurred by a person referred to in Sections 18.02 and 18.03 above who is a party or threatened to be made a party to an action, suit, or proceeding in advance of final disposition of the proceeding upon receipt of an undertaking by or on behalf of such person to repay the expenses if it is ultimately determined that such person is not entitled to be indemnified by the Association. The undertaking shall be by unlimited general obligation of the person on whose behalf advances are made but need not be secured.

18.09. **Non-Exclusivity of Rights.** The indemnification or advancement of expenses provided under this Article XVIII is not exclusive of other rights to which a person seeking indemnification or advancement of expenses may be entitled under a contractual arrangement with the Association. However, the total amount of expenses advanced or indemnified from all sources combined shall not exceed the amount of actual expenses incurred by the person seeking indemnification or advancement of expenses.

18.10. **Former Directors and Officers.** The indemnification provided in this Article XVIII continues as to a person who has ceased to be a director or officer and as to any other person entitled to indemnification who has ceased to hold the position creating such entitlement, and shall inure to the benefit of the heirs, executors and administrators of such person.

18.11. **Definition of Director, Etc.** For purpose of this Article XVIII, director, officer and committee or sub-committee member shall be deemed to include both the insurer designated, appointed or serving in that capacity and any individual designated by the insurer to act or serve as its representative, and the word "person" shall be deemed to include any such insurer.

18.12. **Indemnification of Employees and agents of the Association.** The Association may, to the extent authorized from time to time by the Board, grant rights to indemnification and to the advancement of expenses to any employee or agent of the Association to the fullest extent of the provisions of this Article XVIII with respect to the indemnification and advancement of expenses of directors and officers of the Association.

18.13. **Changes in Michigan Law.** In the event of any change of the Michigan statutory provisions applicable to the Association relating to the subject matter of this Article XVIII, then the indemnification to which any person shall be entitled hereunder shall be determined by such changed provisions, but only to the extent that any such change permits the Association to provide broader indemnification rights than such provisions permitted the Association to provide prior to any such change. Subject to Section 18.14 below, the Board is authorized to amend this Article XVIII to conform to any such changed statutory provisions.

18.14. **Amendment or Repeal of Article XVIII.** No amendment or repeal of this Article XVIII shall apply to or have any effect on any director or officer of the Association for or with respect to any acts or omissions of such director or officer occurring prior to such amendment or repeal.

18.15. **Treatment of Expenses.** The expense of any indemnification or reimbursement shall be treated as a cost of administering the Association in the year in which payment is made by the Association and shall be assessed among and paid by all Members and 3103 Members in the manner provided in Article IX.

ARTICLE XIX
Ballot by Members

19.01. Any matter, including the amendment of this Plan of Operation, upon which the members are required or permitted to vote, may be submitted to the Members and voted upon by them by mail or electronic communication such as email. The Board shall fix a date for the counting of votes on proposals submitted to Members, and such proposals shall be sent to the Members for voting prior to the date fixed by the Board for the counting of the votes.

19.02. Each Member shall be allotted the number of votes equal to the number of its total Written Car Years during the most recent annualized period for which such information is available. Unless otherwise provided, a proposal submitted to the Members for a vote shall be adopted if approved by a majority of the total number of votes which Members are entitled to cast as of the date the votes are counted.

ARTICLE XX

Conformity to Statute

20.01. Section 3104 of the Michigan Insurance Code (Act No. 136, P.A. 1978), as written, and as may be amended, is incorporated as part of this Plan of Operation.

ARTICLE XXI
Amendments

21.01. This Plan of Operation may be amended, altered or repealed, in whole or in part, (i) by majority vote of the Board of Directors; (ii) ratified by a majority vote of the Members, each Member being allotted the number of votes equal to the number of its total Written Car Years during the most recent annualized period for which such information is available; and (iii) with the approval of the Commissioner.

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EXHIBIT F

Bureau of Labor Statistics
Occupational Injury and Illness Classifications

Reference: Occupational Injury and Illness Classification Manual Version 2.0, U.S. Department of Labor, Bureau of Labor Statistics, September 2010 (http://www.bls.gov/iif/oiics_manual_2010.pdf)

Major Characteristics for Occupational Injuries and Illnesses

Nature of Injury or Illness identifies the principal physical characteristic(s) of the work related injury or illness.

Part of Body Affected identifies the part of the body directly affected by the previously identified nature of injury or illness.

Source and Secondary Source of Injury or Illness identifies the objects, substances, equipment, and other factors that were responsible for the injury or illness incurred by the worker or that precipitated the event or exposure.

Event or Exposure describes the manner in which the injury or illness was produced or inflicted by the source of injury or illness.

Nature of Injury or Illness

Major Divisions	Selected Subdivisons	Includes
Traumatic Injuries and Disorders	Traumatic injuries to bones, nerves and spinal cord	Fractures, pinched nerve
	Traumatic injuries to muscles, tendons, ligaments, and joints	Dislocations, torn cartilage, shoulder separations, herniated disc, tears, sprains (pulls, hyperextensions, and minor tears to ligaments; twists involving joints; twisted back, knee, or ankle; grade I and II sprains), strains (pulls and minor tears to muscles and tendons, rotator cuff strains), tears, whiplash
	Open wounds	amputations, cuts/lacerations, puncture wounds, gunshot wounds, needlesticks in which there was no further diagnosis
	Surface wounds and bruises	abrasions/scratches, blisters, bruises/contusions
	Burns and corrosions	Heat burns, thermal and scalding burns, chemical burns, electrical burns, friction burns, sunburns, welder's flash, internal burns from inhaling hot spoke and gases
	Intracranial	Crushing head injury, subdural hematomas, skull fractures, concussion
	Effects of environmental conditions	Frostbite, hypothermia, heat stroke, heat exhaustion
	Other	Asphyxiations, strangulations, suffocations, drownings, electrocutions, electric shocks, acute dermatitis, acute irritant dermatitis, asphyxia from toxic chemicals, radiation sickness, poisoning
Diseases and disorders of body systems	Anemia and other disease of the blood and blood forming organs	
	Nervous systems and sense organs diseases	Carpal tunnel syndrome, tarsal tunnel syndrome, conjunctivitis – non-viral, hearing loss, migraine
	Circulatory system diseases	Heart attack, stroke, angina
	Respiratory system diseases	Pneumonia, influenza, emphysema, asthma, asbestos, silicosis
	Digestive system disease and disorders	
	Genitourinary system diseases and disorders	
	Musculoskeletal system and connective tissue diseases and disorders	Bursitis, sciatica, lumbago

Nature of Injury or Illness

Major Divisions	Selected Subdivisons	Includes
	Disorders of the skin and subcutaneous tissue	Cellulitis, abscess, impetigo, acne, corns, calluses
	Other systemic diseases and disorders	Diseases of endocrine systems and thyroid gland
Infectious and Parasitic Diseases		Anthrax, tetanus, HIV, hepatitis, malaria, cholera
Neoplasms, Tumors, and Cancers		Leukemia, Hodgkin's disease
Symptoms, Signs, and Ill-defined Conditions (can't be classified elsewhere)		Sick building syndrome, fainting, hallucinations,, sleep disturbances, excessive sweating, chills, numbness, fatigue, spasms, lack of coordination, eye strain, earache, edema, nose bleed, shortness of breath, difficulty swallowing , irritated throat, hyperventilation, chest pain, hyperventilation, heartburn, hypertension
Other Diseases, Conditions, and Disorders	Damage to prosthetic and orthopedic devices	Damage to corrective lenses, dentures and other dental implants, glass eyes, hearing aids, artificial limbs when there is no mention of injury to the worker's actual body
	Mental disorders and syndromes	Anxiety, stress, depression, post-traumatic stress disorder
Exposures to Disease—No Illness Incurred		Exposure to TB, no illness occurred
Multiple Diseases, Conditions, and Disorders		

Part of Body Affected

Major Divisions	Selected Subdivisions	Includes
Head	Cranial region	Skull
	Ears	
	Face	Cheeks, forehead, eyes, jaw/chin, mouth, teeth and nose/nasal cavity
Neck, Including Throat	Laryngopharynx (major group connecting throat & esophagus)	
	Larynx	
	Pharynx (voice organs & voice box)	
	Trachea	
	Vocal cords	
Trunk	Abdomen	Urinary organs (e.g., bladder & kidneys), intestines, digestive structures (e.g., liver, gallbladder, & pancreas)
	Back	Spine and spinal cord
	Chest	Ribs and internal organs such as esophagus, heart and lungs
	Pelvic region	Hips, pelvis, buttocks, groin, & reproductive structures
Upper Extremities	Arm(s)	Forearm(s), elbow(s), & upper arm(s)
	Hand(s)	Finger(s)
	Shoulder(s)	Clavicle(s) & scapula(e)
	Wrist(s)	
Lower Extremities	Ankle(s)	
	Foot (feet)	Sole(s) & toes(s)
	Leg(s)	Thigh(s), knee(s), & lower leg(s)

Source and Secondary Source of Injury or Illness

Major Divisions	Selected Subdivisions	Includes
Chemicals and Chemical Products		General classes of chemicals (e.g., acids), products (e.g., glues) and specific names of chemicals (e.g.)hydrogen cyanide)
Containers, Furniture, Fixtures	Containers	Bags, barrels, drums, bottles, boxes, pots, pans, trays, tanks, boilers, hoses, dishes, cups, luggage, briefcases, tool belts, skids
	Furniture and fixtures	Cases, bookcases, cabinets, counters, racks, lockers, shelves, cages, floor coverings, wall coverings, window coverings, beds, mattresses, chairs, desks, sofas, tables, lighting fixtures, light bulbs, sings, bathtubs, toilets, blackboards, mirrors
Machinery	Agricultural and garden machinery	
	Construction, logging, and mining machinery	
	Heating, cooling, and cleaning machinery and appliances	
	Material and personnel handling machinery	
	Metal, woodworking, and special material machinery	
	Office and business machinery	
	Special process machinery	Food and beverage processing machinery, food slicers, meat grinders, medical x-ray machinery, packaging, machinery, printing machinery
	Miscellaneous machinery	Audio and video equipment, mobile phones, televisions
Parts and Materials	Building materials – solid elements	Bricks, blocks pipes, angle irons, grates, sheet metal, tiles, roof shingles, lumber, gutters
	Fasteners, connectors, ropes, ties	
	Hoisting accessories	
	Machine, tool, and electric parts	
	Metal materials – nonstructural	
	Tars, sealants, caulking, insulating material	
	Tarps and sheeting – nonmetal	
	Vehicle and mobile equipment parts	

Source and Secondary Source of Injury or Illness

Major Divisions	Selected Subdivisions	Includes
Persons, Plants, Animals, and Minerals	Animals	
	Animal and plant byproducts	
	Infectious and parasitic agents	
	Metallic minerals	
	Nonmetallic minerals, except fuel	
	Person – injured or ill worker	Bodily conditions of injured or ill worker, bodily motion or position of injured or ill worker (reaching, turning, twisting, bending, walking, climbing, running, efforts to recover from a loss of equilibrium)
	Person-other than injured or ill worker	Patient, robbers, bodily fluids or substance of other than injured or ill person
	Plants, trees, vegetation – not processed	
Structures and Surfaces	Confined spaces	
	Buildings-office, plant, residential	
	Structures other than buildings	Bridges, dams, locks, grandstands, pools, scaffolds, catwalks, towers, pools, guardrails, roads signs, mailboxes, hydrants
	Building systems	
	Other structural elements	Entrances, exits, doors, fences, gates, windows, roofs, skylights, ceilings, handrails
	Floors, walkways, ground surfaces	
	Geographical structures	Hills, mountains, valleys, lakes
Tools, Instruments, and Equipment		
Vehicles		
Other sources		Apparel and textiles; environmental and elemental conditions; paper, books, magazines, scrap, waste, debris; steam vapors, liquids, and ice

Event or Exposure

Major Divisions	Selected Subdivisions	Includes
Violence and other injuries by persons or animals	Intentional injury by person	Shooting, stabbing, cutting, slashing, piercing, hitting, kicking, beating shoving, bombing, arson, rape, sexual assault, treat, verbal assault, self-inflected injury
	Injury by person – unintentional or intent unknown	Unintentional shooting, injured by physical contact during horseplay, injured by physical contact with other person in sporting event or physical training, drug overdose-intent unknown
	Animal and insect related incidents	Bites and stings, struck by animal, kicked by animal, bitten by animal
Transportation incidents	Aircraft incidents	Aircraft crash, parachuting incident
	Rail vehicle incidents	Collision between rail vehicle and another vehicle, collision between two rail cars, derailment, fall or jump from rail vehicle, pedestrian struck by rail vehicle
	Animal and other non-motorized vehicle transportation incidents	Animal transportation collision, thrown or fell from animal being ridden, pedal cycle incident
	Pedestrian vehicular incidents	Pedestrian struck by vehicle in work zone, roadway or nonroadway area
	Water vehicle incidents	Water vehicle collision, capsized or sinking water vehicle, fall or jump from water vehicle,
	Roadway incidents involving motorized land vehicle	Roadway collision, vehicle struck object or animal in roadway, jack-knifed or overturned on roadway, ran off roadway, sudden start or stop on roadway
	Nonroadway incidents involving motorized land vehicles	Nonroadway collision, vehicle struck object or animal in nonroadway, jack-knifed or overturned on nonroadway, ran off nonroadway driving surface, sudden start or stop on nonroadway
Fire and explosions		Structural fires, vehicle fires, machinery fires, forest or brush fires, dust explosions
Falls, Slips, Trips	Slip or trip without fall	Slip on substance without fall, trip on uneven surface without fall, trip over self without fall
	Falls on same level	Fall on same level while climbing stairs or steps, fall on same level due to uneven surface, fall on same level due to object, fall to same level due to tripping over self
	Falls to lower level	Fall from collapsing structure or equipment, fall through surface, other fall to lower level

Event or Exposure

Major Divisions	Selected Subdivisions	Includes
	Jumps to lower level	Jump from collapsing structure or equipment, other jump to lower level
	Fall or jump curtailed by personal fall arrest system	
Exposure to harmful substances or environments	Exposure to electricity	
	Exposure to radiation and noise	
	Exposure to temperature extremes	
	Exposure to air and water pressure change	
	Exposure to other harmful substances	
	Exposure to oxygen deficiency	
	Exposure to traumatic or stressful event	
Contact with objects and equipment	Needlestick without exposure to harmful substance	
	Struck by object or equipment (injuries produced by forcible contact or impact between the injured person and the source of injury when *the motion producing the contact is primarily that of the source of injury* rather than the person)	Struck by nontransport powered vehicle, struck by rolling object or equipment, struck by falling object or equipment, struck by discharged or flying object, injured by handheld object or equipment, injured by object breaking in hand, injured by slipping or swinging object held by injured worker or other worker
	Struck against object or equipment (injuries produced by forcible contact or impact between the injured person and the source of injury when the *motion producing the contact is primarily that of the injured person*)	Bumping into objects, stepping on objects, kicking objects, being pushed or thrown into or against objects, struck against stationary object or equipment while rising
	Caught in or compressed by equipment or objects	Caught in running equipment or machinery, compressed or pinched by shifting objects, entangled in other object or equipment
	Struck, caught, or crushed in collapsing structure, equipment, or material	Excavation or trenching cave-in, mine collapse or cave-in, landslide, engulfment

Event or Exposure

Major Divisions	Selected Subdivisions	Includes
	Rubbed or abraded by friction or pressure	Rubbed or abraded by kneeling on surface, rubbed or abraded by objects being handled, rubbed or abraded by foreign matter in eye, rubbed or abraded by shoes or apparel
	Rubbed, abraded, or jarred by vibration	Rubbed, abraded, or jarred by vehicle vibration or equipment
Overexertion and bodily reaction	Overexertion involving outside sources	Overexertion in lifting, pushing, pulling, turning, throwing, and catching.
	Repetitive motions involving microtasks	Typing, key entry, texting, mousing, repetitive use of tools and equipment, repetitive grasping, placing, or moving objects
	Other exertions or bodily reactions	Bending, crawling, reaching, twisting, climbing, stepping, kneeling, sitting, standing, walking, running, boarding, alighting

CDC Centers for Disease Control and Prevention
CDC 24/7: Saving Lives, Protecting People™

Promoting productive workplaces through safety and health research NIOSH

The Bureau of Labor Statistics (BLS) developed the Occupational Injury and Illness Classification System (OIICS) to characterize occupational injury and illness incidents. OIICS was originally released in 1992. The BLS redesigned OIICS (Links.aspx) in 2010 with subsequent revisions in 2012. The OIICS includes four hierarchical coding structures: Nature (Trees/MultiTree.aspx?TreeType=Nature) of the injury or illness; Part of Body Affected (Trees/MultiTree.aspx?TreeType=BodyPart) by the injury or illness; Source and Secondary Source (Trees/MultiTree.aspx?TreeType=Source) of the injury or illness; and Event or Exposure (Trees/MultiTree.aspx?TreeType=Event).

NIOSH in collaboration with the BLS has developed this web site and the accompanying downloadable software application as a resource for occupational safety and health researchers, policy makers, employers, and others who may need to use the OIICS for uniformly characterizing occupational injuries and illnesses or better understanding the national occupational injury and illness data released by the BLS and NIOSH (see About OIICS (About.aspx)). To code or use the OIICS coded data one should properly understand the OIICS Coding Selection Rules (CodingSelectionRules.aspx).

This site provides graphical tree interfaces for the current OIICS version (v2.01) and the earlier version (v1.01) that was in use before the redesign. The coding trees are searchable and include descriptive details. The complete OIICS manuals are viewable as a separate document. In addition, standalone software versions (Download.aspx) of the coding trees are available for download and installation on your own computer desktop.

OIICS Coding Scheme Definitions

Nature (Trees/MultiTree.aspx?TreeType=Nature):	the principal physical characteristic(s) of the injury or illness.
Part of Body Affected (Trees/MultiTree.aspx?TreeType=BodyPart):	the part of the body directly affected by the previously identified nature of injury or illness.
Source and Secondary Source (Trees/MultiTree.aspx?TreeType=Source):	the objects, substances, equipment, and other factors that were responsible for the injury or illness incurred by the worker or that precipitated the event or exposure.
Event or Exposure (Trees/MultiTree.aspx?TreeType=Event):	the manner in which the injury or illness was produced or inflicted by the source of injury or illness.

Coding Selection Rules (CodingSelectionRules.aspx)

Go to OIICS Code Trees

Bureau of Labor Statistics Injuries, Illnesses, and Fatalities Program (http://www.bls.gov/iif)
202-691-6170
iifstaff@bls.gov (mailto:iifstaff@bls.gov)

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Content source: National Institute for Occupational Safety and Health (NIOSH) (http://www.cdc.gov/niosh/) Division of Safety Research

EXHIBIT G

Nature of Injury

(/TOPIC/17/SLEEP-APNEA)

Definition - What does *Nature of Injury* mean?

Nature of injury identifies the primary physical characteristics of an injury. It provides a description of the damage relating to the part of the body that is affected. Nature of injury is one of the eight categories used by the Association of Workers' Compensation Boards of Canada (AWCBC) to classify injuries in the workplace. The Centers for Disease Control (CDC) in the United States, considers nature of injury to refer to the physical characteristics of the injury.

WorkplaceTesting explains *Nature of Injury*

Nature of injury is a way of classifying and identifying injuries in the workplace. The exact definition and classification methods vary based on the jurisdiction of government agencies. Specifically, the United States and Canada look at nature of injury differently. However, it still all boils down to a method of classifying injuries.

In accordance with the National Work Injuries Statistics Program, there are several groupings that injuries can be classified under:

- Nature of Injury
- Part of Body
- Source
- Event
- Industry
- Occupation
- Province or Territory
- Gender and Age

Nature of injury characterizes the damage to the body. For instance, a sprain to the ankle specifies the body part as being the ankle and the nature of the injury being a sprain.

Where more than one injury is relevant, the primary injury must be identified and not the injuries that occur as a side-effect, complication, or subsequently to the original injury. If there are several injuries that occurred in the same instance, the most serious injury should be identified.

EXHIBIT H

WorkSafeNB Injury Analysis
Definitions

Nature of Injury or Disease

The nature of injury or disease variable identifies the principal physical characteristic(s) of the injury or disease.

Examples: sprain to the back would indicate the back is the body part and sprain is the nature of the injury; broken arm would indicate that the arm is the body part and the fracture is the nature of the injury; crushed finger would indicate the finger is the body part and crushing is the nature of the injury.

Source of Injury or Disease

The source of injury or disease classification identifies the object, substance, exposure, or bodily motion that directly produced or inflicted the injury.

Examples: if an object hit a finger it would suggest a tool, instrument or piece of equipment was the source of the injury; if someone slipped on a substance it would suggest a liquid was the source of the injury; if someone is exposed to heat, electricity or chemicals and gets sick it would suggest the exposure (chemicals, electrical, thermal) is the source of the injury; if bodily motion such as climbing, bending, reaching, twisting caused an injury it would suggest climbing or bending or reaching, etc., is the source of the injury.

Event or Exposure

The event or exposure variable describes the manner in which the injury or disease was produced or inflicted by the identified source of injury or disease.

Examples: falls on stairs, so falls is the event and stairs is the source; struck by machine so struck by is the event and the machine is the source.

Part of Body

The part of body classification identifies the part or parts of the injured person's body directly affected by the nature of injury or disease.

Examples: if a finger is amputated then the finger is the body part and the amputation is the nature; if a foreign body goes into a person's eye then the body part is the eyes and the nature is foreign bodies

Definitions from "National Work Injuries Statistics Program", AWCBC, January 1999.